

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
Appellant,
vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

Filed

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F. D. Monckton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Praecipe for Transcript on Appeal...	841
Answer of Defendant George E. James.....	9
Answer of Defendant Edward Webster.....	7
Assignment of Error	818
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions	43
Bond on Appeal	40
Certificate and Order Settling and Allowing Bill of Exceptions	805
Certificate of Clerk U. S. District Court to Transcript of Record	843
Certificate of Notary	763
Certificate of Notary	770
Citation	835
Complaint	1
Conclusions of Law	816
Cross-Interrogatories Propounded to S. A. Harper	780
Cross-Interrogatories to be Propounded to Capt. H. H. Lloyd	799
Cross-Interrogatories to be Propounded to John R. Mitchell	750
Cross-Interrogatories to be Propounded to John R. Mitchell	764

Index.	Page
DEPOSITIONS ON BEHALF OF PLAINTIFF:	
HUNTER, J. C.....	722
Cross-examination	730
Redirect Examination	736
Recross-examination	739
Redirect Examination	740
Recross-examination	741
LLOYD, CAPTAIN H. H.....	116, 784
DEPOSITIONS ON BEHALF OF DEFENDANTS:	
HARPER, T. A.....	774
MITCHELL, JOHN R.....	754, 764
Direct Interrogatories to be Propounded to John R. Mitchell	745
Exceptions to Findings of Fact and Conclusions of Law, etc.....	836
EXHIBITS:	
Plaintiff's Exhibit No. 1—Notice.....	610
Plaintiff's Exhibit No. 2—Minutes of Miners' Meeting of March 21, 1881....	611
Plaintiff's Exhibit No. 3—Minutes of Miners' Meeting of March 26, 1881....	612
Plaintiff's Exhibit No. 5—Deed—Murray to Johnson, Dated November 22, 1893..	614
Plaintiff's Exhibit No. 6—Deed—Murray to Carroll, Dated October 26, 1893....	617
Plaintiff's Exhibit No. 7—Deed—Hughes to Griffin, Acknowledged February 18, 1884	619

Index.

Page

EXHIBITS—Continued:

Plaintiff's Exhibit No. 8—Deed—Murray to Griffin, Dated June 30, 1894.....	622
Plaintiff's Exhibit No. 9—Deed—Johnson et ux. to Carroll, Dated February 20, 1895	628
Plaintiff's Exhibit No. 10—Deed—Carroll et al. to Waterbury et al., Dated March 13, 1897	630
Plaintiff's Exhibit No. 11—Deed—Griffin et al. to Waterbury et al., Dated March 30, 1897	636
Plaintiff's Exhibit No. 12—Deed—Griffin to Waterbury et al., Dated May 12, 1897..	641
Plaintiff's Exhibit No. 13—Trustees' Deed —Lyons to Waterbury et al., Dated March 21, 1898	644
Plaintiff's Exhibit No. 14—Trustees' Deed —Lyons to Waterbury et al., Dated November 9, 1898	649
Plaintiff's Exhibit No. 15—Trustees' Deed, Lyons to Waterbury et al., Dated No- vember 9, 1898	652
Plaintiff's Exhibit No. 16—Trustees' Deed, Lyons to Waterbury et al., Dated Jan- uary 5, 1899	656
Plaintiff's Exhibit No. 17—Deed—Water- bury et al., to Pacific Coast Co., Dated April 1, 1898	659
Plaintiff's Exhibit No. 17—Map.....	670

Index.	Page
EXHIBITS—Continued:	
Plaintiff's Exhibit No. 18—Deed—Waterbury et al. to Pacific Coast Co., Dated April 12, 1898	671
Plaintiff's Exhibit No. 19—Map.....	677
Plaintiff's Exhibit 20—Map.....	678
Plaintiff's Exhibit No. 21—Articles of Incorporation of Pacific Coast Co.....	679
Plaintiff's Exhibit No. 22—Lease—Pacific Coast Co. to Davidson, Dated July 1, 1905	687
Plaintiff's Exhibit No. 23—Photograph..	691
Plaintiff's Exhibit No. 24—Contract for Deed, Pacific Coast Co. and Messerschmidt, Dated August 13, 1913.....	693
Plaintiff's Exhibit No. 25—Map of Portion of Juneau, Alaska.....	697
Plaintiff's Exhibit No. 26—Contract for Deed—Pacific Coast Co. and Gemmett, Dated Aug. 9, 1913.....	699
Plaintiff's Exhibit No. 27—Contract for Deed—Pacific Coast Co. and Gemmett, Dated May 19, 1913.....	704
Defendants' Exhibit "A"—Diagram.....	711
Defendants' Exhibit "B"—Deed—Pacific Coast Co. to Messerschmidt, Dated May 10, 1913.....	713
Defendants' Exhibit "C"—Plat of Pacific Coast Addition to City of Juneau, etc..	720
Defendants' Exhibit "D"—Agreement—Madsen and James—Dated June 6, 1913	721

Index.	Page
Findings of Fact and Conclusions of Law.....	29
Findings of Fact and Conclusions of Law Re- quested by the Plaintiff.....	807
Interrogatories to be Propounded to Capt. H. H. Lloyd.....	795
Judgment ..	34
Memorandum of Decision.....	23
Motion to Amend Complaint, etc.....	50
Names and Addresses of Attorneys of Record..	1
Order Extending Return Day of Citation.....	839
Order Granting Petition for Appeal.....	39
Order Settling and Allowing Bill of Exceptions, Certificate and..	805
Petition for Allowance of Appeal....	37
Praecipe for Transcript on Appeal, Amended..	841
Proceedings had July 17, 1914.....	46
Reply.....	19
Statement by Mr. Bayless, etc.....	46
Stipulation	772
Stipulation.....	794
Stipulation as to Taking of Deposition of John R. Mitchell	743
Stipulation Extending Return Day of Citation..	838
TESTIMONY ON BEHALF OF PLAINTIFF:	
DAUTRICK, A. S.....	334
Cross-examination.....	345
Redirect Examination.....	357
In Rebuttal	557
Cross-examination	559
Redirect Examination.....	560
Recross-examination.....	566

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TUFF—Continued:		
DAVIDSON, CHARLES E. (in Rebuttal).		576
Cross-examination.....		584
EWING, S. H.....		119
Cross-examination..		125
Redirect Examination.....		128
Recross-examination.....		129
Recalled		361
Cross-examination.....		363
Recalled		390
Recalled in Rebuttal		585
Cross-examination...		593
GEMMETT, P. L. (in Rebuttal).....		595
Cross-examination...		598
MARSHALL, J. B.....		55
MESSERSCHMIDT, GUSTAV H. (in Re-		
buttal)		525
Cross-examination.....		541
Redirect Examination		556
Recalled in Rebuttal		567
Cross-examination.....		574
Redirect Examination....		576
SCOTT, JOHN R.....		304
Cross-examination.....		308
Redirect Examination.....		331
SWAN, W. F.....		263
Cross-examination.....		280
Redirect Examination.....		292
Recross-examination....		293
Redirect Examination....		296

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF—Continued:		
WEBSTER, EDWARD.....		66
Cross-examination.....		80
Redirect Examination.....		83
Recross-examination.....		86
WELLS, C. W.		87
Cross-examination.....		96
Redirect Examination..		104
Recross-examination....		107
WINTER, LLOYD.....		382
Cross-examination.....		385
Redirect Examination		389
Recross-examination....		390
TESTIMONY ON BEHALF OF DEFEND-		
ANTS:		
BACH, FRANK.....		391
Cross-examination.....		397
Redirect Examination.....		405
Recross-examination.....		406
BIERNOTH, CHARLES		153
Cross-examination.....		162
Redirect Examination.....		170
Recross-examination..		171
Redirect Examination.....		172
Recross-examination....		173
Redirect Examination.....		173
CASEY, W. W.....		201
Cross-examination.....		205
Redirect Examination.....		211

	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANTS—Continued:		
EWING, S. H.....	..	516
Cross-examination..	519
JAMES, GEORGE E.....		407
Cross-examination....	443
Redirect Examination...	486
Recross-examination.....	493
Redirect Examination.....	504
Recross-examination.....	514
Redirect Examination.....	515
In Sur-rebuttal		604
Cross-examination.....	608
KOHN, SAM.....		187
Cross-examination.....	192
LUND, LOUIS....		226
Cross-examination...	229
Redirect Examination.....	237
Recross-examination.....	237
MARSHALL, J. B.....		523
ROBERTS, FRANK...		174
Cross-examination.....	178
Redirect Examination....	184
Recross-examination.....	186
Redirect Examination	186
Recross-examination.....	187
ROSS, ALEX. M.....		215
Cross-examination.....	220
Redirect Examination...	224

Index. Page

TESTIMONY ON BEHALF OF DEFEND-
ANTS—Continued:

WEBSTER, EDWARD..... 241

Recalled—Cross-examination 366

Redirect Examination... 377

WILHELM, VICTOR H..... 600

Cross-examination..... 602

Redirect Examination... 604

Transcript of Stenographer's Record..... 44

[Names and Addresses of Attorneys of Record.]
SHACKLEFORD & BAYLESS, Attorneys for
Appellant.

Address: Juneau, Alaska.

GUNNISON & ROBERTSON, Attorneys for Ap-
pellee.

Address: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Complaint.

Comes now the above-named plaintiff and for
cause of action and complaint against the defendant
alleges:

I.

That the Pacific Coast Company is a corporation
duly organized and existing.

II.

That on the 6th day of March, 1881, M. W. Murry,
being a citizen of the United States over the age of
twenty-one years and a resident of Juneau, Alaska,
entered upon, located and claimed and entered into
the actual possession of a certain piece or parcel of

land, the same being unappropriated vacant land and being free and open to location and appropriation, which said piece of land is described as follows:

Located, lying and being about one-eighth of a mile east of the town of Harrisburg, now Juneau, Alaska, the center line being marked by a blazed tree and notice and a large boulder near low-water mark in line S. 25° W. The magnetic courses and distances are as follows: Commencing at a stake and mound of stone about one-eighth of a mile easterly from the town of Juneau from Gastineau Channel, thence First, N. 25° E. 600 feet; thence, Second, 65° E. 600 feet E.; Third, 25° W. 600 feet to stake and mound of stone at low-water mark; thence, Fourth, N. 65° W. 600 feet along the water line to the place of beginning, all of which said land borders and abuts upon Gastineau Channel, a navigable arm of the North Pacific Ocean, in the said District of Alaska; that the said land was located by the said M. W. Murray and improved and that [1*] the said M. W. Murray and his successors entered into the possession of the same and have been in the actual, notorious, exclusive and continuous (adverse) RWJ. possession (under color and claim of title for more than seven years) of the same since the 6th of March, 1881, and that the said block of land is known as the Carroll-Murray Wharfsite in the town of Juneau and occupies a frontage of 600 feet along the low-water mark of the said town of Juneau, including the tide-lands from said low-water mark to the upland abutting thereon, and includes

*Page-number appearing at foot of page of original certified Record.

the upland abutting thereon.

III.

That by mesne conveyances from the said M. W. Murray this plaintiff is now the owner of and in possession of the said described property, including the water front above described and out to the deep water of Gastineau Channel; that the said plaintiff and its immediate grantors have been since the sixth of March, 1881, in the open, notorious and continuous possession of each and all of the said lands and occupying the same and exercising domain over the tide-lands above described and over the right of way out to deep water aforesaid since said date; and the said lands lie immediately in front of blocks O, P, Q, R, S and T in the townsite of Juneau and that the said plaintiff is the owner of and in possession of the said Blocks O, P, Q, R, S and T in the said townsite of Juneau.

IV.

On or about the 15th day of August, 1913, the defendants above named with a gang of men and piles entered upon the property above described and with a pile-driver upon the lands and premises of this plaintiff in front of blocks O, P, Q, R, S and T and upon the ground so occupied and claimed by the predecessors in interest of this plaintiff on and prior to the 17th day of May, 1884, and began the erection of a series of posts or piles, beginning immediately in front of Blocks R, S and T, and are continuing to drive the said piles and posts with said gang of men and threaten to take possession and control of all of the tide-lands so owned and occupied by this plain-

tiff since the 6th of March, 1881, and [2] under the provisions of the Act of Congress of May 17, 1884, and threaten to obstruct plaintiff's right of way out to deep water in said channel and threaten to further construct upon said piling and posts after capping the same, a platform and wharf, and will occupy and possess and control all of the waterfront in front of Blocks R, S and T in the said townsite of Juneau and thus deprive the plaintiff of the use and occupancy of the said waterfront property for the purposes mentioned herein and completely obstruct and shut the plaintiff out of the said property and exclude it from the same and from its right of way to deep water of Gastineau Channel.

V.

That all of said acts and threatened acts and doings of said defendants are against the will and consent of the plaintiff and that plaintiff has notified the defendants of its rights in the premises and to refrain from doing and committing the wrongs complained of herein, and requested the defendants to refrain from further prosecution of said work and no further to trespass upon plaintiff's property, but defendants still persist in the said wrongful things and will still continue the work and improvements aforesaid unless restrained by this Honorable Court, and with the said acts and matters complained of herein and placing the said obstructions upon the property of the plaintiff, as herein indicated, and will render the same valueless and useless, all to the great and irreparable damage of this plaintiff, and that the plaintiff has no plain, speedy and adequate

or complete remedy at law, and that the plaintiff has good reason to believe and does believe that unless the defendants are restrained from the acts and things now being committed and those threatened and contemplated that they will continue said work so undertaken to completion, and if any further notice is served upon the defendants of the application for an injunction by this plaintiff, before this plaintiff can obtain any relief by and through this Honorable Court the said defendants will have succeeded in rendering valueless the property of this plaintiff, and that the doings of the defendants are contrary to equity and good conscience and that the [3] defendants threaten to and will continue a series of trespasses upon the property herein described and that only by an action in equity before this Court for an injunction can a multiplicity of suits be avoided.

WHEREFORE, plaintiff prays:

1. That a temporary restraining order and injunction issue out of this Court restraining and enjoining the defendants during the pendency of this action from doing the things and matters complained of herein and from placing piling, posts, mudsills or capping in front of the property of the plaintiff and particularly in front of Blocks R, S and T of Juneau townsite and within the boundaries of the location of the said M. W. Murray made on the 6th day of March, 1881, and hereinbefore referred to;

2. That upon final hearing herein the defendants be perpetually restrained from committing the wrongs herein complained of and that the temporary

restraining order herein be made perpetual and for such other and further relief as to the Court may seem just and equitable in the premises, and for plaintiff's costs and disbursements expended herein.

SHACKLEFORD and BAYLESS,

Attorneys for Plaintiff.

United States of America,

District of Alaska,—ss.

Lewis P. Shackelford, being first duly sworn, on oath deposes and says: I am the Attorney of the Pacific Coast Company, the plaintiff herein, at Juneau, Alaska, and make this verification on account of and for the plaintiff; that I have read the foregoing bill of complaint, know the contents thereof and the same is true; that I make this verification for the reason that the officers of the said company are out of the District of Alaska.

LEWIS P. SHACKLEFORD.

Subscribed and sworn to before me this 15th day of August, 1913.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My commission expires Dec. 10, 1913.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Aug. 15, 1913. E. W. Pettit, Clerk. [4]

[Endorsed]: Original. No. ——. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Complaint. Shackelford and Bay-

less, Attorneys for Plaintiff. Office: Juneau,
Alaska. [5]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Answer of Defendant Edward Webster.

Comes now Edward Webster, one of the defendants above named and answering plaintiffs' complaint herein, alleges:

I.

That he neither has nor claims to have any right, title or interest, or claims of right, title or interest in, or to the property described in the complaint herein, and that the pile driver operated by him was placed upon the tide-lands in front of Blocks S and T mentioned in said complaint, for the purpose of driving piling for George E. James, the occupant and claimant, as this defendant is informed and believes, of the tide-lands in controversy here.

WHEREFORE the defendant, Edward Webster, prays that said action be dismissed as against him, that he be permitted to go hence and that he have his costs and disbursements herein and such other and

further relief in the premises as to the Court may seem just and equitable.

EDW. WEBSTER,

Defendant.

United States of America,
Territory of Alaska,
Division No. One,—ss.

Edward Webster being duly sworn, deposes and says: [6] That he is one of the defendants above named and is the defendant described in the above answer; that he has read over the same and knows the contents thereof; that the same is true except as to those matters therein alleged to be stated on information and belief, and as to those matters he believes it to be true.

EDW. WEBSTER.

Subscribed and sworn to before me this 20th day of August, 1913.

[Seal] R. E. ROBERTSON,
Notary Public in and for the Territory of Alaska.

My commission expires June 19, 1917.

[Endorsed]: In the District Court for the Territory of Alaska, Division No. One. Pacific Coast Company, Plff., vs. George E. James et al., Defts. No. 1024—A. Answer of Defendant, Edward Webster. Gunnison & Robertson, Attorneys-at-law, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Aug. 20, 1913. E. W. Pettit, Clerk. By H. Malone, Deputy. [7]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

Court No. 1024-A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Answer [of Defendant George E. James].

Comes now George E. James, one of the defendants above named, and for answer to plaintiff's complaint herein, admits, alleges and denies as follows:

I.

Answering the first paragraph of said complaint, alleges that he has no knowledge or information sufficient to form a belief as to the truth of all and singular the allegations therein contained and therefore DENIES the same.

II.

Answering the second paragraph of said complaint, defendant ADMITS that the portion of the land described in said second paragraph of said answer, to wit: All that portion below the line of mesne high tide, was on March 6, 1881, vacant and unappropriated land and free and open to appropriation and location; DENIED that said land so described in the said complaint was located by the said M. W. Murry and improved; DENIES that the said M. W. Murry and his successors or the said Murry or his success-

ors or any of them ever entered into the possession of said land; DENIES that the said M. W. Murry and his successors or the said M. W. Murry or his successors or any of them have been in the actual, notorious, exclusive or continuous possession [8] of the said land since March 6, 1881, or at all; ALLEGES that he has no knowledge or information sufficient to form a belief as to the truth of all and singular the allegations therein contained and not herein specifically admitted or denied; and therefore DENIES the same and each and every allegation thereof.

III.

Answering paragraph three of said complaint, the defendant DENIES that this plaintiff is now or at any time has been the owner and in possession of the premises, described in said complaint, including the waterfront above described and out to the deep water of Gastineau Channel or any part or portion thereof; DENIES that plaintiff and its immediate grantors were on the 6th day of March, 1881, or at any time since said day, have been in the open, notorious and continuous possession of each and all of said lands or any part or portion thereof; DENIES that the said plaintiff and its immediate grantors or any of them did on March 6, 1881, occupy, or at any time since said date have occupied the said land and exercised domain over the lands above described or any part thereof; DENIES that the said plaintiff and its immediate grantors or any of them were in the open, notorious and continuous possession and occupying and exercising domain over the right of way out to

deep water over and across the tide lands aforesaid on the 6th day of March, 1881, or at any time since said day; ADMITS that the tide lands above described lie immediately in front of Blocks O, P, Q, R, S and T of the Townsite of Juneau; ALLEGES that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in said third paragraph and not herein specifically admitted or denied, and therefore DENIES the same and each and every allegation thereof. [9]

IV.

Answering paragraph number four of said complaint, ADMITS that on or about the 15th day of August, 1913, defendant with a gang of men and with piles and a pile-driver; began the repair and alteration of certain structures upon that portion of the lands and premises described in the said complaint, to wit:

That certain tract of tide land about one hundred thirteen (113) feet in length extending along the westerly side of Franklin Street and from the said westerly side of Franklin Street, out to the deep and navigable water of Gastineau Channel, situate in front of, but not abutting upon Lots 1 and 2, of Block T, and the southerly thirteen (13) feet of Lot 1 of Block S, in the Townsite of Juneau; BUT defendant alleges that he was then and there and at all times since the 15th day of April, 1900, has been and now is in the open, notorious, exclusive, undisturbed, and continuous possession, use and occupancy of the said tide-lands last above described, and during all of said times, has used, occupied and possessed the

same; DENIES that he went upon any part of the lands or premises of the plaintiff herein; DENIES that the lands and premises upon which he commenced the repairs and alterations as aforesaid, were the lands and premises of this plaintiff or that this plaintiff has any right, title or interest thereto or therein; ADMITS that said structures upon which he commenced the repairs and alteration as aforesaid, were upon the tide lands between Block T, and the southerly portion of Block S, and the deep and navigable waters of Gastineau Channel; DENIES that the ground upon which he was as aforesaid was occupied or claimed by the plaintiff or its predecessors in interest prior to May 17, 1884; DENIES that he threatens or intends to take possession and control of all or any of the [10] tide land owned and occupied by the plaintiff since March 6, 1881; DENIES that the plaintiff or its predecessors has, or at any time had, any interest in the premises hereinabove described under the provisions of the Act of May 17, 1884; DENIES that defendant did on the 15th, day of August, 1913, or at any other time threaten or attempt to obstruct plaintiff's right of way out to the deep and navigable waters of said channel; DENIES that plaintiff and its grantors or plaintiff or its grantors, now or ever has had any right of way out to the deep water of Gastineau Channel upon, over and across the herein described premises; DENIES that plaintiff or its grantors, or its predecessors in interest are now or ever have been in possession of the said herein described premises or any part or portion thereof; DENIES all and sin-

gular the allegations in paragraph four not specifically admitted or denied.

V.

Answering paragraph five of said complaint, defendant DENIES that plaintiff has any right, title or interest in or to the said herein described lands so claimed, occupied and possessed as aforesaid by this defendant, or that plaintiff has *any* right to pass over, through or upon said lands for any purpose whatever; ALLEGES that defendant is now and at the time of the commencement of this action, was, and at all times since the 15th day of April, 1900, has been in the open, notorious, exclusive, undisturbed and continuous use, occupancy and possession of the said tide lands herein described; DENIES all and singular the allegations of the said paragraph five not herein specifically admitted or denied.

AND for a further separate and affirmative answer and defense herein, defendant ALLEGES as follows, to wit: [11]

I.

That on or about the 15th day of April, 1900, this defendant, being a citizen of the United States, over the age of twenty-one years and a resident of the Territory of Alaska, entered upon, located and claimed, and entered into the use, occupancy and possession of, that certain piece of tide land, lying between the upland and the deep and navigable waters of Gastineau Channel, which said premises so entered upon, located and claimed by defendant as

aforesaid, and into the use, occupancy and possession of which defendant then and there entered as aforesaid, extended along the line of mesne high tide a distance of about one hundred (100) feet in front of Lots 1 and 2, of Block T, and thirteen (13) feet in front of the southerly thirteen (13) feet of Lot 1, in Block S, of the Townsite of Juneau, making a total frontage of about one hundred thirteen (113) feet, and extended from said line of mesne high tide out to the deep and navigable waters of Gastineau Channel, and that at the time the said defendant went upon, located and claimed and entered into the use, occupancy and possession of the said tidelands, the same were vacant, unused, unoccupied and unappropriated lands of the United States and were free and open to location use, occupancy and appropriation.

II.

That after locating, claiming and entering upon and into the occupancy and possession of said lands as aforesaid, this defendant proceeded to and did improve said premises for the purpose of rendering the same suitable as a place for loading and unloading and discharging rafts, scows, barges and other craft; that defendant has ever since been, and now is in the open, notorious, exclusive, continuous and undisturbed possession, use and occupancy of said land and has used the said premises as a [12] landing place for scows, barges, gasolene and steamboats and other craft and has at various times discharged lumber, gravel and other building supplies and materials upon and over and across said premises from

such craft; that in the year 1906, and thereafter, defendant further improved the said premises by the erection and construction thereon of certain substantial, permanent structures, to wit: a gridiron for the purpose of receiving there on lumber and other building materials discharged from craft as aforesaid, and has erected and constructed and caused to be erected and constructed upon said premises, an approach or roadway from said Franklin Street to said gridiron, for the purpose of giving access from the street to the same for teams and conveyances.

III.

That this defendant, his agents, servants and employees have continuously and almost daily used and occupied said tract and have been in the open, notorious, exclusive, continuous and undisturbed use, possession and occupancy of said tract of land, using the same for the purpose of docking, lightering, loading, unloading and discharging scows, boats and craft, and for laying up boats, scows and other craft for repair and for other purposes, since the 15th day of April, 1900.

IV.

That prior to the commencement of this action, plaintiff, by various certain formal conveyances, deeded to the Town of Juneau, and dedicated to said town and the public as a public street, road, or highway, a strip off the westerly portion of Blocks R, S and T, abutting upon the line of mesne high tide and further, dedicated other portions of said lots

and blocks as public streets, roads and alleys; that said conveyances and [13] dedications have been accepted by said town; that by said acts, the said plaintiff cut off, abandoned and parted with, and divested itself of any and all littoral and riparian rights, if any it ever had, and any right or privilege of access to or from deep water from the said upland across the tide lands herein described, and thereby estopped itself from claiming any such right, title or interest in or to or right of access across, said herein-described tide lands.

V.

Upon information and belief, that prior to the commencement of this action, this plaintiff attempted to and did part with, and did sell and convey to other persons, not parties to this action any and all right, title and interest in the tide lands and other lands described in said complaint and herein described, of which said plaintiff, in said complaint, alleges itself to be the owner, and that plaintiff is not now and was not at the time of the commencement of this action, the real party in interest, it having theretofore parted with and divested itself of whatever right or claim of right to, or interest in, the said property it may, at any time, have pretended or claimed to have had therein.

VI.

That, on or about the 17th day of August, 1913, while a temporary restraining order, made and entered theretofore by this Court, was in force and effect, restraining and enjoining this defendant

pendente lite from driving piles or erecting structures or otherwise interfering with plaintiff on said tract, plaintiff and its agents, servants and employees acting, by, through and under it, employed a piledriver with a crew of men to go upon said tract, and attempted and threatened to drive piles upon said herein described tide lands immediately in front of the defendant's [14] structures thereon, and attempted and threatened to block and cut off defendant's right of access to and from his said structures, from and to the deep and navigable waters of Gastineau Channel and to render the said premises useless to defendant, and that plaintiff will, unless restrained by this Honorable Court, drive piles and erect other structures in front of defendant's said tide lands and defendant's said structures, thereon situated, and upon defendant's said land, and will cut off and deprive this defendant of his right of access over and across said tide lands to and from his said structures, from and to the deep and navigable waters of Gastineau Channel, and will render said tide lands and the structures thereon erected at great cost to defendant, useless and of no value to defendant, and deprive defendant of the use thereof, and threatens to and will irreparably damage and injure this defendant unless restrained from doing the acts and things threatened as aforesaid.

WHEREFORE, defendant prays:

First: That plaintiff take nothing by this action;

Second: That until the final hearing of this proceeding, plaintiff, its agents, servants, and employees be restrained and enjoined from in any way in-

terfering with or disturbing defendant's possession, use and occupancy of said tract of land, and from placing piling, posts, dolphins, mudsills, wharves or other structures, or mooring boats, scows, barges, or other vessels or craft, in front of or upon the said property of this defendant, described in this answer.

Third: That upon final hearing herein, defendant be adjudged to be the owner and in possession and entitled to the possession of said premises and that said temporary restraining order be made permanent. [15]

Fourth: That defendant have his costs and disbursements herein.

Fifth: That defendant have such other and further relief as may be just and equitable in the premises.

GUNNISON & ROBERTSON,

Attorneys for Defendant, George E. James.

United States of America,

Territory of Alaska,

Division Number one,—ss.

George E. James, being first duly sworn on oath, deposes and says that he is one of the defendants in the above-entitled action; that he has read over the foregoing answer and knows the contents thereof and that the same are true, except as to matters herein alleged to be stated upon information and belief and as to those matters, he believes it to be true.

GEORGE E. JAMES.

Subscribed and sworn to before me this 28th day of March, 1914.

[Notarial Seal] ROYAL A. GUNNISON,
Notary Public in and for the Territory of Alaska.

My commission expires on the 10th day of May, 1917.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Answer. Gunnison & Robertson, Attorneys at Law, Juneau, Alaska. Receipt of copy and due service of the within answer admitted this 28th day of March, 1914. Shackleford & Bayless, Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division, Mar. 28, 1914. J. W. Bell, Clerk. By ———, Deputy. [16]

*In the District Court for the Territory of Alaska,
Division No. 1, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Reply.

I.

The plaintiff replying to the allegations set out in

defendant's further, separate and affirmative answer and defense herein, denies all and singular the allegations contained in paragraphs I, II and III.

II.

Referring to paragraph IV of said affirmative defense set out in said answer, the plaintiff admits that it deeded to the City of Juneau a certain strip of ground from the westerly portion of Blocks R, S and T, and further admits that it conveyed certain portions of said lots and blocks as public streets, roads and alleys; that said dedications have been accepted by the town, but denies each and every other allegation of fact contained in said paragraph.

III.

Referring to paragraph V of said affirmative defense set out in said answer, plaintiff denies each and every allegation therein contained.

IV.

Referring to paragraph VI of said affirmative defense set out in said answer, the plaintiff admits that on or about August 17, 1913, while a temporary restraining order made and entered theretofore by this Court was in force and effect, restraining and enjoining the [17] defendants pendente lite from driving piles or erecting structures or otherwise interfering with plaintiff on said tract; that the plaintiff and its agents, servants and employees acting by, through and under it, employed a pile-driver with a crew of men to go upon said tract and attempted to drive piles upon said herein-described tide lands immediately in front of the structures occupied by the

defendant thereon and attempted to and threatened to block and cut off defendants' alleged right of access to and from the said structure from and to the deep and navigable waters of Gastineau Channel and to render the said premises useless to the defendant; admits that plaintiff will, unless restrained by this Honorable Court, drive piles and erect other structures upon the said strip of tide lands claimed to be owned by defendants and in front of the grid-iron occupied by the defendants situated thereon and will cut off and deprive the defendants of their alleged right of access over and across said tide lands to and from said structures from and to the deep and navigable waters of Gastineau Channel; admits that it will render said tide lands and structures thereon alleged to have been erected by defendants useless and of no value to the defendants and deprive defendants of the use thereof, but denies that it will irreparably damage and injure the defendants by said acts.

WHEREFORE, plaintiff prays:

1. That the defendants be perpetually restrained from committing the wrongs herein complained of and from placing piling, posts, mudsills or capping in front of the property of this plaintiff and particularly in front of Blocks R, S and T of the Juneau townsite and within the boundaries of the location of the said M. W. Murray made on the 6th day of March, 1881, and in any way interfering with or disturbing the plaintiff's possession, use and occupancy of said tract of land. [18]

2. That the plaintiff be adjudged to be the owner of and entitled to the possession of the said premises herein described.

3. That the plaintiff have of and from the defendants its costs and disbursements herein laid out and expended, and such other and further relief as to the Court may seem just and equitable in the premises.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

United States of America,

District of Alaska,—ss.

S. H. Ewing, being first duly sworn, on oath deposes and says: I am the agent of the Pacific Coast Company, the plaintiff herein, at Juneau, Alaska, and make this verification on account of and for the plaintiff; that I have read the foregoing reply, know the contents thereof and the same is true; that I make this verification for the reason that the other officers of the said company are without the District of Alaska.

S. H. EWING,

Subscribed and sworn to before me this 17th day of July, 1914.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My commission Expires Dec. 22, 1917.

[Endorsed]: Original No. 1024-A. In the District Court for the district of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants.

Reply. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Due service of a copy of the within is admitted this 17th day of July, 1914. Gunnison & Robertson, Attorneys for Deft., Geo. E. James. Filed in the District Court, District of Alaska, First Division. Jul. 18, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [19]

*In the District Court for the District of Alaska,
Division No. One.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES,
Defendant.

Memorandum of Decision.

JENNINGS, Judge:

In 1881 a man by the name of M. W. Murry filed a location notice, as follows:

(Copy)

Shortly afterward the miners in and around Juneau passed a resolution approving the location.

In 1881 the construction of a wharf was begun and in 1882 the wharf was completed.

There is no evidence that Murry built the wharf or had anything to do with its building, or that any consent from Murry was obtained. In fact, Murry seems to have vanished for several years, and it was only in 1898 that plaintiff acquired whatever rights Murry had, if indeed he had any.

Certain it is, however, that in 1882 the plaintiff went into use and occupation of the wharf, and in the absence of any evidence to the contrary, it must be presumed that plaintiff owned said wharf and used and occupied, that is possessed it, in its own right. The wharf was built in the shape of a T, the stem of which was —— feet extending from the upland to deep water a distance of —— feet, with a face at deep water, [20] The plaintiff was engaged in the transportation business between Seattle and Juneau, and was operating such steamers as the Idaho, the Ancon, the Queen, etc. The steamers operated by the company were much too long for the face of the dock, so that it was necessary, in rough weather, while a vessel was to lie at the face of the dock, to moor the bow and stern of the vessel by lines running therefrom to the shore. Whether these lines were fastened to stumps or boulders on the shore, or to a pile at low water, the evidence is not very satisfactory, but I think it is clear that a space of at least 250 to 300 feet on each side of the center line of the wharf was a necessary adjunct to the use and enjoyment of the wharf as a landing place for such vessels as were operated by the plaintiff.

In 1892 the plaintiff built another wharf nearer the Town of Juneau—in fact, in the town—and from 1894 landed its vessels, entirely, at this new wharf. The evidence is that only one of plaintiff's vessels—to wit, the Alki—was docked at the old wharf after 1894. The Alki docked there in 1895. But there is no evidence that she was moored by bow or stern

lines running to the shore—fastened upon or over the property in dispute. The old wharf was allowed to fall into unrepair and disuse—the structures near the upland were converted into a sardine factory, a glove factory, a tenement house. There is no evidence that after the plaintiff moved to the new wharf it used or occupied the premises in dispute for any purpose whatsoever.

In 1894 then the plaintiff ceased to use or occupy, for any purpose whatsoever, any part of the tide lands in controversy. A period of six years now elapses during which the said tide lands remained in a state of nature—no improvements thereon—no occupancy—no sign of occupancy—no use made of them by any one—no act of ownership performed by anyone. There is no evidence [21] that the plaintiff renounced its claim, i. e., it did not say in words: “I no longer claim,” but there is every evidence that it abandoned, forsook, ceased to use, improve, or care for the tide land.

What then was the legal status in 1900 of the tide land in controversy?

Plaintiff claims that it then belonged to them. The basis of plaintiff’s claim is this:

(a) Plaintiff claims that the land in dispute belonged to it because by the Act of May 17, 1884, it was provided that Indians or others should not be disturbed in the possession of lands then in their actual use or occupation or claimed by them.

One may use or occupy lands and yet not claim them; one may claim lands and yet not use or occupy them. I think the last “or” in that statute must be

read as “and,” for certainly it is unthinkable that Congress intended that a person was ever afterward to be protected, on account of the fact that in 1884 he claimed a piece of land. In the case of *Sutter v. Heckman*, 1 Alaska, 199–200, Judge Brown, formerly of this court, said:

“It is believed that the language used in the Act of Congress of May 17, 1884, ‘used or occupied,’ limits the following words, ‘or claimed by them’ used in the same connection. Clearly, Congress never intended that an Indian or white man might say to his neighbors, ‘I claim a hundred thousand acres, or a million acres, or any other amount of land, between certain boundaries or natural land marks, as my individual property,’ and that such a claim would be protected by said acts, and made sacred to the rights of the claimant as a property right.”

Thus construing the word “or,” the statute would read: “Indians and other persons shall not be disturbed in the possession of lands in their use or occupation and claimed by them.”

But the statute is simply a prohibition against any one disturbing the possession if any such possession exists; it is not a prohibition against the aliening or transferring that possession—nor against abandoning it. In the case last cited [22] the Circuit Court of Appeals for the Ninth Circuit held that the right under the Act of 1884 could be conveyed. If it could be conveyed, it could be abandoned, for an abandonment of possession is in effect a conveyance

not to any specific person, but to all the world.

In *Carroll v. Price*, 81 Fed. 143, Judge Delaney, formerly of this court, virtually construed the statute in the same way in his instructions to the jury. Carroll, in that case, claimed under the Act of 1884, but the charge was:—

“If you find from the evidence that the plaintiff and his grantors have been in the continuous occupancy and possession of the tract located by Powers in 1881 * * * . On the other hand, if you find that the plaintiff did not have such possession, or that the ground was unoccupied, unpossessed, and unimproved public land when Price took possession of it in 1895, then he had the right to go on, locate and occupy it, and the defendants, and his grantees, are entitled to your verdict.”

In 1884 plaintiff had use, occupation and claim of the tide land in controversy, but after 1894 it did not continue the use or occupation of the tide land in controversy. How, then, was it possessed of any right to keep others off?

Plaintiff contends that it had color of title, and being in *foot* possession of the tide land covered by the wharf, it had constructive possession to the limits of the paper title. As a proposition of law, this may be conceded, and that leads to the inquiry: “Did plaintiff have color of title?”

It is claimed that plaintiff’s color of title was this, to wit: The location notice filed in the office of the U. S. Commissioner at Juneau on the — day of

———, by M. W. Murry. The answer to this is twofold—

(I) There is no evidence that prior to 1898 they claimed under or had anything to do with Murry.

(II) If Murry were but a trustee for them so that the location notice is really their location notice, yet a location notice is not color of title. [23]

Color of title is that which purports to be title, but is no title. It is not title, but only the semblance of title. It must be in form a conveyance of title. One cannot make his own color of title. A location notice is not a conveyance—it is a mere claim.

In 1900 defendant went upon the tide land, cleared it of boulders and commenced to use it as a landing place for rafts, and scows, and ever since said year has been so using it without let or hindrance from plaintiff—improving it from time to time.

During all this time plaintiff has neither used nor occupied the tide land in question, except that it collected some rent from Receiver Davidson, and permitted one Messerschmidt to land some wood there and has paid taxes. This is insufficient. The permission to Davidson and Messerschmidt is on a par with the proposition of the tramp to the slow-witted person that the former would give the latter one-half of all the logs floating down the Yukon past Dawson which the latter might catch, while as to the payment of taxes, that is only a circumstance evidencing a bare claim—it evidences neither use nor occupation.

(89 P. R. 417—Oreg.; 66 P. R. 923—Oreg.)

As to the claim of plaintiff that defendant is pre-

venting or interfering with his access from the uplands, the proof is substantially like that in the case of McCloskey v. Pacific Coast Co. Whatever littoral rights plaintiff may once have had have been cut off by conveyances and by the street.

Findings and decree for defendant.

[Endorsed]: No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff vs. George E. James, Defendant. Memorandum of Decision. Filed in the District Court, District of Alaska, First Division. Oct. 26, 1914. J. W. Bell, Clerk. [24]

In the United States District Court, for the District of Alaska, Division No. One, at Juneau.

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Findings of Fact and Conclusions of Law.

This matter having come on, on July 17, 1914, before the above-entitled court, the Honorable Robert W. Jennings, Judge thereof, presiding, for trial by the said Court without a jury, the defendant, Edward Webster, in his answer theretofore filed herein having waived any and all claim of any right, title or interest in the premises in controversy, and the

said plaintiff, the Pacific Coast Company, a corporation, having appeared by its attorneys, Shackelford and Bayless, and the said defendant, George E. James, having appeared by his attorneys Gunnison and Robertson, and the Court, on said 17th day of July, 1914, and succeeding days, having heard all the evidence, and the proofs adduced by said plaintiff and said defendant, respectively, and at the conclusion of the taking of said evidence and proof, having heard argument of counsel, took said matters under advisement until the 26th day of October, 1914, when being fully advised in the premises, it rendered its written decision and now hereby finds from [25] the evidence as facts herein as follows, viz:

I.

That on the 15th day of April, 1900, the premises in controversy in this suit, to wit:

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet along the line of mean high tide in front of lots 1 and 2, block T, and part of lot 1 in block S, as follows: That is to say, the full width of lots 1 and 2, block T, being 100 feet more or less, and the 13 feet of lot 1 in Block S, which is contiguous to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean,

was vacant, unused, unoccupied, unappropriated land of the United States.

II.

That on said date defendant George E. James, being then a citizen of the United States and a resident of Alaska, claimed, took possession of and entered into the use, occupation and enjoyment of said tract, and improved same by clearing the same of driftwood and boulders, and rendering it suitable as a place for loading and unloading, repairing and otherwise handling rafts, lighters, boats, scows, barges and other craft, and began and, until the commencement of this suit continued, to use and occupy the same in and for said purposes, and in connection with the lumber and sawmill business then and at all times since conducted by him. That in the year 1906, and again in 1908, 1911 and 1912, said defendant made and constructed another and other improvements upon said premises and erected thereon permanent structures, to wit, gridirons, platforms, and approaches from the street to said platforms and gridirons, to facilitate the said purposes for which said premises were used and occupied by him, which said use, occupation and claim have at all times been open, notorious, continuous [26] and without let, hindrance or interruption until the doing of the matters and things complained of in the answer herein.

III.

That on or about the 17th day of August, 1913, plaintiff, Pacific Coast Company a corporation, without right, and against the will and consent of said defendant, entered upon the said tract, and began, and threatened to continue, and unless restrained

by law will continue, to drive piles and erect structures in front of, that is, on the seaward side of the structures and improvements of the defendant in such a manner as to block and cut off said defendant's access and communication between his said structures and the deep and navigable waters of Gastineau Channel and in such manner as to render said premises valueless and useless to said defendant for the purposes aforesaid.

IV.

That said acts and threatened acts of plaintiff do and will constitute a continued trespass, and will cause defendant irreparable loss and damage, for which he will have no adequate remedy at law, and will render the premises in controversy useless and of no value to defendant for the uses and purposes for which he, said defendant, originally appropriated and used the same and for which he has since used the same.

V.

That at the time of the acts complained of by plaintiff, and at the time of the commencement of this suit, plaintiff was the owner of said lots R, S and T, but that a long time prior to the commencement of this action, by various certain formal conveyances and instruments, it deeded and dedicated to the municipality known as the town of Juneau, and to the [27] public use, as a public street and highway, a certain strip of upland, being the westerly portion of said lots 1 and 2, in block T, and of lot 1 in Block S, which said portions so deeded and dedicated abutt upon the line of mean high tide of the

waters of said Gastineau Channel and that said plaintiff also deeded and dedicated to said town, certain other portions of said lots 1 and 2, in block T, and of lot 1 in Block S, as public streets and alleys; that said upland so deeded and dedicated to said town and the public use, as public streets, highways and alleys, was duly accepted by said town for said purposes and for a long time theretofore was, and at all times thereafter has been, used as such public streets, highways and alleys by the general public, and that since said dedications and use plaintiff has not been, and is not now, the owner of any upland upon which the tideland in controversy abutts.

And from the foregoing facts found, the Court draws the following:

CONCLUSION OF LAW.

I.

That defendant George E. James is entitled to a decree adjudging him to be the owner of said tract of tideland and enjoining plaintiff from in any manner interfering with the full enjoyment and use by defendant of his said property.

Done in open court this 27th day of January, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Findings of Fact and Conclusion of Law. Filed in the District

Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy.
[28]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Judgment.

This cause came on on the 17th day of July, 1914, at this term in the above-entitled court, the Honorable Robert W. Jennings, Judge thereof, presiding, to be heard by the Court, without a jury, upon the complaint as amended, the answer of the defendant, George E. James, and the reply, and the testimony and proofs in the cause, and the cause having been argued by respective counsel for plaintiff and for George E. James, one of the defendants, the other defendant, Edward Webster, having filed herein a disclaimer of any right, title or interest or claim thereof, of, in or to the premises in controversy, and the Court having taken the matter under advisement, and thereafter and on the 26th day of October, 1914, and at this term of this Court being fully advised in the premises, having rendered his

decision of the cause in writing in favor of the defendant George E. James, and having at this term on to wit, the 27th day of January, 1915, made and filed herein its Findings of Fact and Conclusion of Law.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED— [29]

I.

That plaintiff take nothing by his complaint in this action, and that the temporary restraining order heretofore issued out of this court on plaintiff's application be, and the same is hereby discharged

II

That George E. James, defendant in this action, is the owner and entitled to the possession of that certain tract of tide land, situate in the town of Juneau, Alaska, and more particularly described as follows:

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet along the line of mean high tide in front of lots 1 and 2, block T, and part of lot 1 in Block S, as follows: that is to say, the full width of lots 1 and 2, block T, being 100 feet more or less, and the 13 feet of lot 1 in block S, *which contiguous* to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean.

III.

That the plaintiff, Pacific Coast Company a corporation, be, and it is hereby restrained and en-

joined from asserting any right, title or interest in or to said premises, or any part thereof.

IV.

That said Pacific Coast Company, a corporation, plaintiff herein, and its and each and all of its agents, servants and employees, and each and every and all persons acting by, through or under the authority or direction of said plaintiff, or any of its agents servants or employees, be and they are, and each of them is hereby forever enjoined and restrained from in any manner or form whatsoever, obstructing, interfering with, or hindering the full and complete use, occupancy, possession and enjoyment by the defendant, George E. James, his agents, servants and employees, or his successors or assigns, of the [30] premises hereinbefore described as belonging to him, the said George E. James, or with his or their right of access thereto and therefrom, from and to the said deep and navigable waters of Gastineau Channel.

V.

That the defendant George E. James do have and recover of and from said Pacific Coast Company, a corporation, plaintiff in this action, his costs and disbursements herein to be taxed.

Done in open court this 27th day of January, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Judgment. Filed

in the District Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [31]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Petition for Allowance of Appeal.

To the Honorable ROBERT W. JENNINGS,
Judge of the District Court, District of Alaska,
Division Number One, at Juneau.

The above-named plaintiff, Pacific Coast Company, a corporation, conceiving itself aggrieved by the judgment made and entered in the above-entitled court and cause on January 27th, 1915, wherein and whereby it was and is adjudged and decreed as follows, to wit:

I.

“That plaintiff take nothing by his complaint in this action, and that the temporary restraining order heretofore issued out of this court on plaintiff’s application be, and the same is hereby discharged.

II.

That George E. James, defendant in this ac-

tion, is the owner and entitled to the possession of that certain tract of tide land, situate in the town of Juneau, Alaska, and more particularly described as follows: [32]

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet in length along the line of mean high tide in front of lots 1 and 2, Block T, and part of lot 1 in Block S, as follows: that is to say, the full width of Lots 1 and 2, Block T, being 100 feet more or less, and the 13 feet of lot 1 in Block S, which is contiguous to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean.

III.

That the plaintiff, Pacific Coast Company, a corporation, be, and it is hereby restrained and enjoined from asserting any right, title or interest in or to said premises, or any part thereof.

IV.

That said Pacific Coast Company, a corporation, plaintiff herein, and its and each and all of its *agent*, servants and employees, and each and every and all persons acting by, through or under the authority or direction of said plaintiff, or any of its agents, servants or employees, be and they are, and each of them is hereby forever enjoined and restrained from in any manner *of* form whatsoever, obstructing, interfering with or hindering the full and complete use, occupancy, possession and enjoyment

by the defendant, George E. James, his agents, servants and employees, or his successors or assigns, of the premises hereinbefore described as belonging to him, the said George E. James, or with his or their right of access thereto and therefrom, from and to the said deep and navigable waters of Gastineau Channel.

V.

That the defendant George E. James do have and recover of and from said Pacific Coast Company, a corporation, plaintiff in this action, his costs and disbursements herein to be taxed.” does hereby appeal to the United States Court of Appeals for the Ninth Circuit, from said judgment and decree, for the reasons set forth in the assignment of errors, and prays that [33] this, its petition for the said appeal, may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated February 6th, A. D. 1915.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

[Order Granting Petition for Appeal.]

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in chambers, this 8th day of Febr. 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Petition for Allowance of Appeal. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Service of a copy of the within is admitted this 6th day of February, 1915. R. E. Robertson of Attorney for Defendant James. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. [34]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Number 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

EDWARD WEBSTER and GEORGE E. JAMES,
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Henry Shattuck and A. A. Humfrey, are held and firmly bound unto George E. James and Edward Webster, defendants in the above-entitled action, in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said defendants, their executors, administrators, attorneys, or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and

assigns, jointly and severly, firmly by these presents.

Sealed with our seals and dated this 6th day of February, 1915.

WHEREAS, lately at a session of the District Court for the District of Alaska, Division Number One, at Juneau, in a suit pending in said court between the said Pacific Coast Company, plaintiff, and George E. James and Edward Webster, defendants, a decree was rendered against the said Pacific Coast Company, and the said Pacific Coast Company having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment of the aforesaid suit rendered on the 27th day of January, 1915, and a Citation directed to the above-named defendants and appellees, is about to be issued citing [35] and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California.

Now the condition of the above obligation is such that if the above-named Pacific Coast Company shall prosecute its said appeal to effect, and shall answer all costs that may be awarded against it, if it fail to make good its plea, then this obligation is to be void, otherwise to remain in full force and effect.

THE PACIFIC COAST COMPANY,

By S. H. EWING,

Its Agent and Attorney in Fact.

HENRY SHATTUCK.

A. A. HUMFREY.

United States of America,
District of Alaska,—ss.

Henry Shattuck and A. A. Humfrey, being first duly sworn, each for himself and not one for the other, on oath deposes and says: I am a resident and householder of the District of Alaska, and am worth the sum of Five Hundred (\$500.00) Dollars over and above all the legal liabilities and exclusive of property exempt from execution.

HENRY SHATTUCK.

A. A. HUMFREY.

Subscribed and sworn to before me this 6th day of Feby., 1915.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska,

My commission expires Dec. 22, 1917.

O. K.—R. E. ROBERTSON,

Of Counsel for Deft. James.

Sufficiency of the Sureties on the foregoing bond approved this 6th day of February, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original No. 1024—A. In the District Court for the District of [36] Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendant. Bond. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. [37]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Bill of Exceptions.

BE IT REMEMBERED that the above-entitled cause came on regularly for trial on the 17th day of July, 1914, before the Hon. Robert W. Jennings, Judge of the District Court for the District of Alaska, Division Number One, at Juneau; the plaintiff being represented by its attorneys, Messrs. Shackleford & Bayless, and the defendants being represented by their attorneys, Messrs. Gunnison & Robertson, whereupon the following proceedings were had: [38]

*In the District Court, for the District of Alaska,
Division No. One.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES,

Defendant.

Transcript of Stenographer's Record.

SHACKLEFORD & BAYLESS, Attorneys for
Plaintiff.

GUNNISON & ROBERTSON, Attorneys for
Defendant.

HON. ROBERT W. JENNINGS, Judge of U.
S. District Court, District of Alaska, Divi-
sion No. One.

INDEX.**PLAINTIFF'S CASE:**

	Dr.	Cr.	ReD.	ReC.	ReD.	ReC.	ReD.
Dautrick, A. S.	271	280	291	292	292		
Ewing, S. H.	70	74	78	78			
Ewing, S. H. (Recalled)	98						
Ewing, S. H. (Recalled)	295	297					
Ewing, S. H. (Recalled)	321						
Hunter, J. C. (Deposition).....	62						
Lloyd, H. H. (Deposition).....	67						
Marshall, J. B.	10						
Webster, Edward	20	33	36	39			
Wells, C. W.	40	48	55	57			
Wells, C. W. (Recalled).....	63	66					
Winter, Lloyd	313	315	319	320			
(Rebuttal)							
Dautrick, A. S.	469	470	471				
Dautrick, A. S. (Recalled)	474	476					
Davidson, Charles E.	486	492					
Ewing, S. H.	494	500					
Gemmett, P. L.	503	505					
Messerschmidt, Gustav H.	442	454	467				
Messerschmidt, Gustav H. (Rec.) ...	478	483	485				
Swan, W. F.	206	221	232	233	235		

DEFENDANT'S CASE:

	Dr.	Cr.	ReD.	ReC.	Red.	ReC.	ReD.
Bach, Frank	322	327	335	336			
Biernoth, Charles	101	109	117	118	119	120	120
Casey, W. W.	147	151	156				
Ewing, S. H.	433	436					
Harper, Theodore A. (Deposit'n.)....	238						
James, George E.	338	369	406	412	422	430	431
Kohn, Sam	134	138					
Lund, Louis	172	175	182	182			
Marshall, J. B.	439						
Mitchell, John R. (Deposition).....	238						
Roberts, Frank	121	124	131	132	133	133	
Ross, Alex M.	161	165	169				
Scott, John R.	244	248	268				
Webster, Edward	186	299	309				
Wilhelm, Victor H.	508	510	511				
(Rebuttal)							
James, George E.	512	515					

[39]

EXHIBITS.

PLAINTIFF'S:

No. 1	Page	7
2		8
3		8
4		13
5		13
6		14
7		14
8		14
9		15
10		15
11		16
12		16
13		16
14		17
15		17
16		17
17		18
18		18
19		24
20		66
21		93
22		213
23		315
24		481
25		499
26		505
27		505

DEFENDANT'S:

"A"	Page 189
"B"	439
"C"	440
"D"	513

[Statement by Mr. Bayless, etc.]

(This cause came on for trial at 10 A. M., July 17, 1914, Mr. W. S. Bayless, of Shackleford & Bayless, appearing for the plaintiff, and Mr. R. E. Robertson, of Gunnison & Robertson, appearing for the defendants. Mr. Robertson requested a continuance until 2 P. M. the same day, on account of the fact that Mr. R. A. Gunnison, senior member of the firm, who had charge of the case, was on the Str. "City of Seattle" and would be in court at that time.)

Mr. BAYLESS.—I think we might proceed—I might be allowed to put in my record testimony, make my statement, and read my depositions, and then when Judge Gunnison comes, I could put on my witnesses for oral testimony.

The COURT.—I don't see any objection to that.

Mr. ROBERTSON.—Of course, if your Honor please, it isn't so much my objection personally—it is because Judge Gunnison expects to try the case and I would rather have him try the whole thing.

The COURT.—Allowed to put in all record testimony— There is no cross-examination on record testimony. You may proceed, Mr. Bayless.

Mr. BAYLESS.—If your Honor will permit me, I would like to make a statement.

Mr. ROBERTSON.—I would like to interpose an exception

The COURT.—Exception is allowed.

Proceedings Had July 17, 1914.

Mr. BAYLESS.—This is a particularly serious case and was instituted about a year or so ago and has

been pending ever since. It stands now on restraining orders on both sides. The hearing on the order to show cause—we got a restraining order against the defendants, restraining them. [41*—1†] from building in front of property that we claim, and, likewise, they got a temporary injunction to keep the matter *in statu quo*. We expect to prove that on the 6th of March, 1881, M. W. Murray, who was a citizen of the United States, located, claimed, and entered into possession of the piece of property in the town of Juneau 600 feet in width and length—600-foot square block, beginning with the low-water mark of Gastineau Channel and extending up the hill; that thereafter, and sometime in the summer of 1881, the wharf was constructed known as the Carroll-Murray Wharf—the wharf was commenced—and that the same was completed in the spring or summer of 1882; and that from that time until sometime in the year 1894 this wharf was used by all of the ocean-going vessels which plied to the Port of Juneau, and was the only wharf in town at that time; and that when the wharf was built, the face of it was only 60 feet wide by about 40 feet long—40 feet wide and 60 feet long—and, on account of the narrowness of the face of the wharf, it was necessary for the vessels to be moored to the shore by head and stern lines; that large piles were driven at the extreme limits of the property, to wit, 600 feet wide, on the tide lands between high and low tide, and that all of the vessels which docked at the Carroll-Murray Wharf—almost all of them—tied up with head and

*Page-number appearing at foot of page of original certified Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

stern lines to these piles, the piling serving the dual purpose of defining the limits of the Carroll-Murray location notice and also to moor these vessels, and that it was necessary to moor these vessels in such a manner, and that the whole tract of the tide lands from the year 1881 to 1894 were actually used by the wharf structures and by the occupation of these vessels which came there, by means of these piles, and that [42—2] we have several affirmative defenses. We first take the position under the Act of 1884 as to our possessory rights in all of this property known as the Carroll-Murray Wharf Site, including the ground now claimed by Mr. James. We further take the position that since we had the actual possession from 1881 or 1882 down to 1894 under a duly recorded location notice, that such occupation and possession is within the meaning of our statutes, which provide that an open, notorious, adverse possession, under color and claim of title for more than seven years will conclusively give title, save and except as against the United States. We further take the position that Mr. James never used the beach except in a casual and transitory way until 1896—I mean 1906—or thereabouts, when the Perseverance Company, or Charles E. Davidson, as receiver of the Wrangell Sawmill, finished hauling the mill timbers for the Perseverance Mill, which mill timbers were landed on the gridiron and finished with that gridiron. Mr. James then came in and used this gridiron under a permit from the Pacific Coast Co., this plaintiff, and Mr. James has been in possession only since 1906, or thereabouts, down to the date of the institution of this case; that his possession has been

permissive and never has been open, notorious, and adverse, and we also propose to prove that since 1894, the time the Carroll-Murray Wharf was abandoned as a wharf—and I want to be distinctly understood as objecting to the use of the word abandon in any other sense than that they discontinued the use of that wharf—and from 1894 the plaintiff, the Pacific Coast Company had supervision of these tide lands, have kept squatters off, paid taxes, leased it from time to time, have acted as owner and claimed it, and have in no sense [43—3] abandoned the property. We further take the position that Mr. James can never get an adverse possession against us down there without color of title, for the reason that this is unpatented property—Government property—and that no adverse possession will run prior to the date—

The COURT.—As against a private party?

Mr. BAYLESS.—As against us. We claim that we have as good a title as it is possible to get and that our title is as good as against any one save and except against the United States. In other words our possession is perfected so far as any one except the Government is concerned, and we take the position that since it is not patented, the statute of limitations will not run prior to patent, and that Mr. James' possession cannot be adverse to us in any sense of the word, even though he has been there since 1900, as he claims in his answer to have been. I merely make this elaborate statement for the purpose of calling these three points to your Honor's attention now.

If Mr. Robertson has no objection, and the Court will permit me, I would like to introduce the record testimony from the record in the McCloskey case, and if I might be permitted by stipulation to introduce the record to show our chain of title here, I think it would save time, because the chain of title is undoubtedly correct and it would save my having the Commissioner come up and bring all the books.

Mr. ROBERTSON.—Well, of course we deny their title, your Honor. I don't like to stipulate or admit all that chain of title as given in a transcript in another case. I don't think it is the proper proof—not the best evidence, certainly. [44—4]

Mr. BAYLESS.—I appreciate, if the Court please, I have no right, but it was merely to save time. If your Honor will not permit me to do it in that way, I will be compelled to have the Commissioner up.

The COURT.—I cannot permit you to do it over the objection of the defendants' counsel.

Mr. ROBERTSON.—We object to it. Of course, as far as that book is concerned, it seems to me that he might put the Commissioner on to compare it, but I don't like to stipulate—I object to it as not the best evidence.

[Motion to Amend Complaint, etc.]

Mr. BAYLESS.—Before proceeding, there is a matter I will call to the attention of the Court before we start. I would like to amend the complaint in just a couple of minor particulars. In paragraph two of the complaint I would like to change "1888" to "1881."

The COURT.—What page is it on?

Mr. BAYLESS.—Page one of the complaint. It was a typographical error.

The COURT.—It has already been changed here. That is, on the first line of the second paragraph?

Mr. BAYLESS.—Yes.

The COURT.—It reads 1881 here.

Mr. BAYLESS—That is correct, sir. Then on page two of the complaint on line eight after the word “continuous” I would like to add the word “adverse” and after the word “possession” I would like to interpolate “under color and claim of title for more than seven years.”

The COURT.—Any objection to that?

Mr. ROBERTSON.—I don't think so. I would like to have [45—5] an opportunity to amend our answer in regard to that. You see, all my papers—Judge Gunnison took everything and I have nothing in regard to the case at all.

The COURT.—I don't think it would affect your pleading one way or the other.

Mr. ROBERTSON.—Well, of course we deny it. What line is that on?

Mr. BAYLESS.—Right here (indicating).

The COURT.—Are those the only changes?

Mr. BAYLESS.—Those are the only ones, sir.

The COURT.—Now, Mr. Robertson, if this amendment calls for an answer, you may amend the answer already filed, but I apprehend that you deny this allegation.

Mr. ROBERTSON.—Well, of course our papers will be up here this afternoon and we will see them.

As I say, Judge Gunnison took our files with him.

Mr. BAYLESS.—If the Court please, I offer in evidence the location notice by M. W. Murray—a certified copy of which I have here. If Mr. Robertson cares to, I will have the Commissioner up to verify it.

Mr. ROBERTSON.—Well, of course I don't think it is the proper way to offer those things. As I say, inasmuch as I am associate counsel—it would be different if I were the senior counsel—I don't like to admit these unless they are put in in the proper manner.

The COURT.—This appears to be a certified copy of a record by the U. S. Commissioner and Ex-officio Recorder. What is your objection?

Mr. ROBERTSON.—My objection is that it is not the best evidence—where an original location notice or at least an[46—6] original record from the Commissioner's office can be obtained.

The COURT.—I don't think so. You object to it on the ground that it is not the best evidence?

Mr. ROBERTSON.—Yes, sir.

The COURT.—Objection overruled.

Mr. ROBERTSON.—I will add the further objection that it is incompetent, irrelevant, and immaterial.

The COURT.—Your objection will be overruled.

(Admitted in evidence and marked "Plaintiff's Ex. #1.")

Mr. BAYLESS.—I next offer in evidence the minutes of the miners' meeting, Rockwell, Alaska, March 21, 1881,—certified copy of these minutes.

Mr. ROBERTSON.—I will make the same objection to that, your Honor. Further, it seems to me that it is immaterial.

Mr. BAYLESS.—Preliminary—it is the minutes in another meeting I had in mind.

The COURT.—I am not so sure about this, Mr. Bayless.

Mr. BAYLESS.—I would ask your Honor to suspend judgment on this so I will have an opportunity to offer the minutes of the second meeting which I have. I now offer in evidence—

The COURT.—Just a moment. You withdraw this offer for the present?

Mr. BAYLESS.—Just for the present, and ask that they be considered together.

The COURT.—Let us see what the other one is.

Mr. BAYLESS.—A meeting held at Rockwell, Alaska, March 26th, referring to minutes of this meeting—a certified copy. I will say that the minutes of the first meeting are not particularly important, but taken with the minutes [47—7] of the second meeting give the exact situation.

The COURT.—How are miners' meetings relative to property on the waterfront?

Mr. BAYLESS.—It is merely indicative of possession and rights of possession of predecessors in the early days—part of his chain of title.

Mr. ROBERTSON.—I object to that exhibit, your Honor, also on the further ground that it is in no wise binding on defendant in this case.

Mr. BAYLESS.—Wouldn't be any more binding than a deed.

The COURT.—This is not a jury case, gentlemen. These may be admitted and if they are not shown to be relevant, I can disregard them easily enough.

(Admitted in evidence and marked “Plaintiff’s Ex. #2 and #3.”)

Mr. ROBERTSON.—We except.

The COURT.—I may strike them out if I find they are not competent and relevant.

Mr. BAYLESS.—But you admit them subject to their being connected up. If the Court please, I would ask for an adjournment until I get the records from the Commissioner’s office. It will take me about half an hour.

Mr. ROBERTSON.—I wish to make the further objection to this. It is not an abstract of the Commissioner and he has probably a number of deeds in here that if they come up separately we may want to object to them.

The COURT.—Yes, but the objection you already made has been sustained.

(Whereupon the Court took a recess until 11:30 A. M. the same day.) [48—8]

Mr. ROBERTSON.—I might say, your Honor, that the “Seattle” is over at the Island now and coming down to Douglas. It may be that Judge Gunnison will admit that record—as I say, I am not the senior counsel in this case—and I think it might expedite matters to continue the matter until half past one or two o’clock.

The COURT.—It might and it might not. If Judge Gunnison comes and says “No,” we have lost

all this time. There is no use in losing time. [49—9]

[Testimony of J. B. Marshall, for Plaintiff.]

J. B. MARSHALL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Your name is J. B. Marshall?

A. Yes, sir.

Q. You are United States Commissioner for the Juneau Precinct and Ex-officio Recorder?

A. Yes, sir.

Q. Mr. Marshall, I hand you this book and ask you to identify it.

A. This is book No. 1 of lode claims, placer claims, water rights, and town lots, records of the Juneau Recording District.

Q. It is the official record? A. Yes, sir.

Q. I call your attention to page 71 of this book and ask you what that record is.

A. There appears on page 71 an instrument dated Rockwell, Alaska Territory, March 21, 1881, a meeting pursuant to call.

Q. I hand you this instrument and ask you if this instrument is a certified copy of that?

A. It is a certified copy of the record on page 71 of book A, or 1, of lodes.

Mr. ROBERTSON.—Which exhibit is that?

Mr. BAYLESS.—The one introduced over your objection.

Q. I call your attention, Mr. Marshall, to page 73 of the same record. I will ask you what that is.

(Testimony of J. B. Marshall.)

A. This is an adjourned meeting. [50—10]

Q. Miners' meeting?

A. Yes, miners' meeting of the town of Rockwell.

Q. What is the date?

A. Under date of March 28, 1881.

Q. Did I say page 73 or 72? A. 73.

Q. I will change that and ask you what page 72 has on it?

A. That is also a meeting of the miners of the town of Rockwell, dated March 26th.

Q. Is this a certified copy of that record? (Handing paper to witness.) A. It is.

Mr. BAYLESS.—That last exhibit has been offered in evidence.

The COURT.—I never admitted that—yes, I did, subject to motion to strike. They are exhibits “A” and “B.”

The CLERK.—1 and 2.

Mr. BAYLESS.—2 and 3. The first exhibit is the location notice.

Q. (By Mr. BAYLESS.) On page 144 of that record I think a location notice appears, is that so?

A. Location notice of M. W. Murry.

Q. For a wharf site? A. Yes.

Q. Is this a certified copy of Plaintiff's Exhibit No. 1? (Handing paper to witness.)

A. It is, yes, sir.

Q. Mr. Marshall, I ask you to identify this book which I hand you.

A. This is a minute-book of the Harris Mining District from August, 1881, to February, 1888. [51—11]

(Testimony of J. B. Marshall.)

Q. I call your attention to page 15 of that book and ask you what that record shows.

A. That is a meeting adjourned from September 12, 1881, called to order on December 14, 1881, of the miners of the town of Rockwell.

Mr. BAYLESS.—We offer this in evidence, if the Court please. It is for the purpose of showing that the name of the town was first Rockwell, then Harrisburg, and then Juneau. The name was changed at this meeting.

Mr. ROBERTSON.—Is that all that is in that?

Mr. BAYLESS.—You may examine it; I think that is all. No, there is considerable more to it. There are miners' rules, too, and a reference to the Hannah survey and plat, also with reference to the size of the lots.

Mr. ROBERTSON.—Just on page 15, or all these pages that follow it?

Mr. BAYLESS.—The minutes of the entire meeting.

Mr. ROBERTSON.—I object to it as immaterial and irrelevant.

The COURT.—That is a minute-book—what is it known as.

Mr. ROBERTSON.—Minute-book of the Harris Mining District, August, 1881, to February, 1888.

The COURT.—What pages?

Mr. BAYLESS.—15, 16, 17, 18, 19, 20, 21, and 22.

The COURT.—You object on the ground that it is immaterial and irrelevant?

Mr. ROBERTSON.—Yes, your Honor. Of course,

(Testimony of J. B. Marshall.)

I would like to have a chance to go through it more thoroughly. I am taking Mr. Bayless' statement for it. [52—12]

The COURT.—The book will be received subject to motion to strike later on.

Mr. ROBERTSON.—Exception.

The COURT.—It is the minute-book of the Harris Mining District, pages 15 to 22, inclusive, and is known as Plaintiff's Exhibit #4.

Mr. BAYLESS.—May I have the privilege of substituting a certified copy?

The COURT.—Yes, sir.

Q. (By Mr. BAYLESS.) I hand you book 9 of the records of the Juneau Recording Precinct, Mr. Marshall, and call your attention to page 688 and ask you to identify that record.

A. (By the WITNESS.) That is book 9 of Deeds, pages 688 and 689, and show the record of a deed from M. W. Murry to Charles S. Johnson.

Q. What is the date of that deed?

A. The date of the deed is November 22, 1893, filed for record at 11 A. M., November 21, 1893.

Q. What property does it purport to convey?

Mr. ROBERTSON.—It seems to me that the record is the best evidence itself.

The COURT.—Yes.

Mr. BAYLESS.—Very well, we offer the deed in evidence.

Mr. ROBERTSON.—Object to it as immaterial and irrelevant until it is connected up—proven that it is the same property.

(Testimony of J. B. Marshall.)

The COURT.—The exhibits referred to will be received subject to motion to strike.

(Admitted in evidence and marked “Plaintiff’s Ex. #5.”)

Q. (By Mr. BAYLESS.) I call your attention to Book 11, page 665, and ask you if that is an official record of your office. A. It is. [53—13]

Q. What is that instrument there?

A. That is a deed from M. W. Murry to James Carroll.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection to that, your Honor.

The COURT.—Same ruling—subject to motion to strike.

(Admitted in evidence and marked “Plaintiff’s Ex. #6.”)

Q. (By Mr. BAYLESS.) I hand you Book 3 of Deeds; is that an official record of your office?

A. That is.

Q. I call your attention to page 10 and ask you what that is?

A. That is a deed between—or from Edward C. Hughes and M. F. Griffin, pages 10 and 11.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked “Plaintiff’s Ex. #7.”)

Q. (By Mr. BAYLESS.) I hand you book 10; is that an official record of your office?

(Testimony of J. B. Marshall.)

A. Yes, book 10 of deeds, an official record of the office.

Q. I call your attention to pages 163-4-5, and ask you what that instrument is?

A. That is a deed from M. W. Murry to Frank W. Griffin.

Mr. BAYLESS. I offer that deed in evidence and ask to substitute a certified copy in the same way as the rest.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #8.")

Mr. ROBERTSON.—I suppose we are allowed an exception to all these rulings?

The COURT.—Yes, sir. [54-14]

Q. (By Mr. BAYLESS.) I hand you book 12; is that book 12 of Deeds, one of the records of your office? A. Yes, book 12 of Deeds.

Q. I call your attention to page 63.

A. That is a deed from C. S. Johnson and Mary D. Johnson to James Carroll.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked "Plaintiff's Ex. #9.")

Q. (By Mr. BAYLESS.) I call your attention to page 198 of the same record and ask you what that instrument is.

(Testimony of J. B. Marshall.)

A. Mr. James Carroll and D. H. Carroll and Ed. C. Hughes to J. I. Waterbury.

Mr. ROBERTSON.—What is that page, please, 198 and 199?

A. (By the WITNESS.) Yes. Jefferson Coolidge is also a grantee. That is a deed. That runs from pages 198 to 200.

Mr. BAYLESS.—We offer that deed in evidence, together with the attached plat.

Mr. ROBERTSON.—I offer the further objection to that that it is not proven what the plat is.

The COURT.—Same ruling.

(Admitted and marked “Plaintiff’s Ex. #10.”)

Q. (By Mr. BAYLESS.) I call your attention to page 201 of the same record, and ask you what that instrument is.

A. That is a deed from Frank W. Griffin and Sarah E. Murry to J. I. Waterbury and T. Jefferson Coolidge, Jr. That is partly on page 202.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling. [55—15]

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked “Plaintiff’s Ex. #11.”)

(Q. By Mr. Bayless.) I call your attention to page 272 and ask you what that is.

A. That is a deed from Mary K. Griffin—

Q. M. T. Griffin, isn’t it?

A. It is Mary K. Griffin, as one of the heirs at law of M. T. Griffin, deceased, to J. I. Waterbury and T.

(Testimony of J. B. Marshall.)

Jefferson Coolidge, Junior.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked “Plaintiff’s Ex. #12.”)

Q. (By Mr. BAYLESS.) I hand you this volume and ask you to identify it.

A. That is known as the book of Trustees’ Deeds.

Q. An official record of your office?

A. Yes, sir.

Q. I call your attention to page 114, and ask you what that instrument is.

A. That is a conveyance by Thomas R. Lyons, Townsite Trustee, to John I. Waterbury and T. Jefferson Coolidge.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—I make the same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked “Plaintiff’s Ex. #13.”)

Q. (By Mr. BAYLESS.) I call your attention to page 253 of the same volume and ask you what that instrument purports to be.

A. Deed from Thomas R. Lyons to John I. Waterbury and T. J. Coolidge, Jr.

Mr. BAYLESS.—We offer that deed in evidence.

[56—16]

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Testimony of J. B. Marshall.)

(Admitted in evidence and marked "Plaintiff's Ex. #14.")

Q. (By Mr. BAYLESS.) I call your attention to page 254 of the same volume and ask you to identify that instrument.

A. That is a deed from Thomas R. Lyons to the same parties, John I. Waterbury and T. J. Coolidge.

Mr. BAYLESS.—Offer that in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #15.")

Q. (By Mr. BAYLESS.) I call your attention to page 262 of the same volume.

A. That is a deed from Thomas R. Lyons to the same parties.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #16.")

Q. (By Mr. BAYLESS.) What is this volume, Mr. Marshall?

A. This is 13 Deeds, records of the Recorder's office.

Q. I call your attention to page 499.

A. That apparently is a deed from John I. Waterbury and T. Jefferson Coolidge to the Pacific Coast Company, contained on pages 499 to 505 inclusive, and includes a plat.

Mr. BAYLESS.—We offer the deed, together

(Testimony of J. B. Marshall.)

with the attached plat, in evidence.

Mr. ROBERTSON.—We make the same objection; also on the ground that the plat hasn't been properly identified, and we further move to strike the witness' response as to what it apparently is. The instrument itself shows.

A. (By the WITNESS.) Well, it is a deed.
[57—17]

The COURT.—Admitted on the same conditions as stated in preceding testimony.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked "Plaintiff's Ex. #17.")

Q. (By Mr. BAYLESS.) I call your attention to page 505 of the same record and ask you to identify the instrument there recorded.

A. That is a deed from John I. Waterbury and T. Jefferson Coolidge to the Pacific Coast Company, pages 505 to 507 inclusive.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #18.")

Mr. BAYLESS.—I would ask the privilege of having certified copies made by the Commissioner and substitute them for these records.

The COURT.—These are admitted subject to motion to strike.

Mr. BAYLESS.—Yes.

The COURT.—All right.

(Witness excused.)

(Testimony of J. B. Marshall.)

(Whereupon Court adjourned until two o'clock P. M. the same day, when Court reconvened pursuant to adjournment.) [58—18]

Mr. BAYLESS.—In looking over these papers I do not find the reply. There is an affirmative defense set up and I would like to have the privilege of making a denial of that affirmative defense.

The COURT.—A general denial?

Mr. BAYLESS.—Yes, a general denial; and I will frame up a reply and present it tomorrow morning, if I may have that privilege. It was due to an oversight—I had forgotten it. I don't think Judge Gunnison has taken any default on that.

Mr. GUNNISON.—No, I have not.

Mr. BAYLESS.—Were you aware of that?

Mr. GUNNISON.—I was. I was aware that the case wasn't at issue. I assume, your Honor, that the pleadings in the condition in which they were—that the allegations of the affirmative answer stand as denied. I don't know as we have any objection to their filing a general denial, but if there is any affirmative matter in it, we want to be in a position where we are not precluded from moving against it.

Mr. BAYLESS.—I will present the reply in the morning. I think it will be a general and specific denial.

Mr. GUNNISON.—It occurs to me that until the case is fully at issue that we don't know where we are at. Of course, that wouldn't have any effect on the direct proof in the case, but still the case isn't at issue.

(Testimony of J. B. Marshall.)

Mr. BAYLESS.—If your Honor will just consider that there is a general and specific denial to all the allegations of new matter set up in the answer—

The COURT.—Very well. You file a formal reply by tomorrow morning. [59—19]

[Testimony of Edward Webster, for Plaintiff.]

EDWARD WEBSTER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Please state your name and residence.

A. Edward Webster; Juneau.

Q. What is your business, Mr. Webster?

A. Well, different things, telephone, pile driving.

Q. How old are you? A. I am 55.

Q. When did you first come here? A. In 1881.

Q. March 12, 1881? A. Yes, March 12, 1881.

Q. What was your business at that time?

A. Well, when I first came here I was mining.

Q. Where were you living then, in Juneau?

A. I was.

Q. Whereabouts in Juneau were you living?

A. I was living at the old wharf—well not till 1884.

Q. Are you acquainted with the old Carroll-Murray wharf site? A. Yes, sir.

Q. And particularly with blocks R, S, and T, according to the official plat of Juneau? A. Yes.

Q. Were you acquainted in 1881 with blocks R, S, and T,? A. No, sir.

(Testimony of Edward Webster.)

Q. When did you first become acquainted with those blocks? A. About 1885. [60—20]

Q. 1885—Not before that time? A. No.

Q. Do you know the situation on the beach at the site of the old Carroll wharf prior to 1885? A. Yes.

Q. I believe I understood you to say you weren't acquainted with those blocks prior to 1885?

A. No; 1885 was when we had charge of it.

Q. You and your father had charge of it in 1885?

A. Yes.

Q. What was the situation on the beach in 1885 with reference to structures?

Mr. GUNNISON.—We object to that question as too indefinite as to the location on the beach. I think this examination should be—the case should be confined to the land in controversy, or, at the most, to the condition of the so-called Carroll & Murray wharf site—not generally on the beach.

The COURT.—I think that is correct, Mr. Bayless. The question is a little too general.

Q. (By Mr. BAYLESS.) What improvements were on the Carroll-Murray wharf site when you first became acquainted with it in 1885?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial and too indefinite with reference to what the Carroll and Murray wharf site was. The witness testifies he was familiar with it, but I think, for the purpose of the record, it should be shown generally where the Carroll-Murray wharf site was located. Of course, I realize that the Court and counsel understand where it is,

(Testimony of Edward Webster.)

but I think the record should be made a little more specific on [61—21] that subject before entering into a discussion of this case.

The COURT.—He testified that he was superintendent of the company.

Mr. GUNNISON.—I understand, but the Carroll-Murray wharf site might be anywhere. As I recall, there isn't any testimony that it is even in Juneau.

The COURT.—Objection overruled. Read the question. (Q. read by stenographer:) What improvements were on the Carroll-Murray wharf site when you first became acquainted with it in 1885?

A. (By the WITNESS.) Just the wharf and warehouse.

Q. (By Mr. BAYLESS.) Will you describe the wharf, please.

A. Well, the wharf was an approach from the warehouse building upon cribbing or logs. Then from the cribbing out there was an approach—it was 16 feet wide running out about a hundred feet, of piling, and the face of the dock was 40 by 80 feet.

Mr. GUNNISON.—How far did you say it ran out?

A. About 80 feet from the cribbing—about 100 and 40 feet.

Q. (By Mr. BAYLESS.) Built on tide lands in front of blocks O, P, Q, R, S, and T, in the town of Juneau?

Mr. GUNNISON.—Object to that as leading.

The COURT.—Do you mean the entire wharf?

Mr. BAYLESS.—Built out in front of those

(Testimony of Edward Webster.)

blocks, in front of those six blocks.

Mr. GUNNISON.—Object to that as leading and we object to any evidence further with reference to any ground except that in controversy; and the pleadings in the case show that the ground in controversy is the piece directly in front of blocks S and T, 100 feet in front of block T, and 13 feet in block S—front of block S. [62—22]

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. Your Honor understands it is objected to as leading?

Q. (By Mr. BAYLESS.) I asked you if the old Carroll wharf was built on the tide lands in front of blocks O, P, Q, R, S, and T, in Juneau?

A. It is not.

Q. I hand you a map and ask if you can identify the Carroll-Murray wharf on it?

A. This is not a proper map of the situation of the wharf, if that is the wharf out there. The wharf—you see, there was a coal-house here and the wharf comes out here. (Indicating.)

Q. That is the wharf. (Indicating.)

A. Oh, that is it in there, yes.

Q. This map correctly represents the situation on the ground when you first became acquainted with the wharf? A. Yes.

Mr. BAYLESS.—We offer this map in evidence and ask to have it marked.

Mr. GUNNISON.—I would like to ask the witness a question or so with reference to this, your Honor. Q. You say this map correctly represents

(Testimony of Edward Webster.)

the situation when you became acquainted with the property?

A. Yes.

Q. In what respect does it correctly represent it, that is, as to all the lots and buildings and projections of the wharf? A. Just the wharf alone.

Q. What do you mean by the wharf alone?

A. When we went there the property was supposed to be 600 feet wide. [63—23]

Q. Tide flats?

A. Tide flats, and there was a stake right in the center of this warehouse and there was 300 feet on each side of the wharf here. (Indicating.)

Q. Then you mean there are things on that map that were not on there when you came here?

A. Yes, sir,—just the wharf here.

Q. Well, you say the only thing correctly indicated on there was where the dotted lines which bear the inscription “Old Carroll and Murray Wharf, now gone” are?

A. Yes. I built this house. (Indicating.)

Mr. BAYLESS.—Q. Which house?

A. This coal-house and that house there. (Indicating.)

Mr. GUNNISON.—We object to the introduction of the map on the ground that it doesn't show the condition as it was at the time to which this witness testifies. He says there is now more on there than there was at the time.

The COURT.—His testimony has gone to show what was on there and what has been put on there

(Testimony of Edward Webster.)

since; consequently, the map is admissible as far as it goes—taken in connection with the testimony of the witness explaining it. The objection will be overruled.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked: “Plaintiff’s Ex. #19.”)

Q. (By Mr. BAYLESS.) Mr. Webster, when you first became acquainted with the property, were there any piles to define the boundaries?

Mr. GUNNISON.—Object to that as leading?

The COURT.—Yes, I don’t think it is right to lead a witness, Mr. Bayless, on a material matter. [64—24]

Mr. BAYLESS.—I beg your Honor’s pardon. I didn’t think I was leading him.

Q. I will ask you, Mr. Webster, when you first became acquainted with this property, whether the boundaries of the same were marked and defined on the ground? A. No, sir.

Q. Were those boundaries ever defined on the ground as far as you know? A. Yes.

Q. When? A. In 1887, the fall of ’87.

Q. What did those boundaries consist of and where were they placed?

A. Consisted of two piles on the 600 feet limit.

Q. I don’t believe I exactly understand you.

A. Well, you see, we measured off—of course, the property was supposed to be 600 feet wide and there was only one stake on it that we—

Q. Where was that stake?

(Testimony of Edward Webster.)

A. Right in the center of the property where the warehouse stood, on the back there. I did some repairing on the wharf that fall and drove some piles on each end along the shore.

Q. There were not any piles on the seaward boundaries of the claim when you first went there?

A. No, sir.

Q. Well, did you say you drove these piles?

A. Yes, in 1887,—a couple of piles on each end.

Q. Two piles on each end? A. Yes.

Q. How big were those piles?

A. Oh, just small piles driven in the shore.

Q. About how big? [65—25]

A. Twelve or fourteen inches.

Q. And how high from the ground?

A. About five feet.

Q. Were those piles driven on the uplands above high tide? A. No, sir.

Q. Where, with reference to the tide lands?

A. Down on the beach where we could get at them with a pile-driver. Couldn't get up very high—there wasn't enough water to float the pile-driver.

Q. Do you know how the vessels moored at the Carroll wharf in the early days?

A. Yes; they tied to the wharf.

Q. Did they tie head and stern lines ashore?

Mr. GUNNISON.—Object to that as leading and suggestive.

The COURT.—Yes, I think so. He says he knows how—ask him how.

(Testimony of Edward Webster.)

Mr. GUNNISON.—He says they tied to the wharf.

The COURT.—I understand. Ask him how.

Q. (By Mr. BAYLESS.) How did they tie them to the wharf? A. Why, tied to the wharf.

Q. Were they moored in any other way?

A. Not that I ever knew of.

Q. Never ran the head and stern lines ashore?

Mr. GUNNISON.—Object to that as leading and suggestive.

The COURT.—Yes, I think so.

Q. (By Mr. BAYLESS.) You are quite positive, Mr. Webster, that the vessels which came to Juneau in the early days ran their lines to the wharf?

A. All that I tied up and I tied a good many of them—never tied them anywheres else. [66—26]

Q. Were these piles on the corners of the property which you say—were they used for any other purpose than marking the boundaries of the property?

A. Not to my knowledge.

Q. Do you know the extent of the claim of Captain Carroll to that wharf site?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial and not the best evidence.

The COURT.—The objection will be overruled, but you must limit it to some time, Mr. Bayless—claim of Captain Carrol when?

(By Mr. BAYLESS.) When you first became acquainted with the property.

A. No, I did not know the limits of it then.

(Testimony of Edward Webster.)

Q. Did you ever see the location notice?

A. No, never did.

Q. Never at any time? A. No.

Q. You don't know how much of a wharf site Captain Carroll claimed when you first worked on the wharf in 1885? A. No, not until 1887.

Q. And what was the claim in 1887?

A. It was 600 feet to deep water.

Q. You do not know whether or not he had ever claimed that much ground prior to 1887?

A. No.

Q. Were you in Juneau some time in March—March 12th I think it was—1881, when the miners had a meeting? A. I arrived here that day.

Q. Do you know whether or not the miners and citizens of Juneau [67—27] ever recognized Captain Murray's wharf site?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial, and as not the best evidence of what the miners did.

The COURT.—I don't see the materiality of it myself at this time, but I will admit it subject to a motion to strike.

Mr. GUNNISON.—We suggest that the witness be cautioned to answer it yes or no.

The COURT.—Yes, you may answer whether you know. Read the question.

(Q. read by stenographer:.) Do you know whether or not the miners and citizens of Juneau ever recognized Captain Murray's wharf site? A. Yes.

(Testimony of Edward Webster.)

Q. (By Mr. BAYLESS.) Do you know what that recognition consisted of? A. No, I do not.

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling; admitted on the same condition.

Q. (By Mr. BAYLESS.) Did you ever see the minutes of that miners' meeting?

A. No, I did not.

Q. Do you know what was done at that miners' meeting?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence, and that, in any event, the witness is not qualified to testify unless he was personally present and participated in it.

The COURT.—Well, he may answer if he knows.

A. (By the Witness.) Only from hearsay.

Mr. GUNNISON.—We object to anything he has to say, if [68—28] it is only from hearsay and move to strike whatever he has testified to in reference to it.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) You weren't present at that miners' meeting? A. No, sir.

Q. Mr. Webster, did they recognize—

Mr. GUNNISON.—I object.

Mr. BAYLESS.—The witness says he knew the citizens recognized it.

The COURT.—No, he did not. He was asked whether he knows and he testifies he does know.

(Testimony of Edward Webster.)

You asked whether he knows or not and he answered he does. Whether they did or not is another question. He is simply testifying whether he knows whether they did recognize it.

Mr. BAYLESS.—I beg your pardon. I misunderstood the purport of his testimony.

Q. Did the miners and citizens recognize Captain Murray's right to a wharf site?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence, and the witness has already testified that all he knows with reference to that is from hearsay.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) From 1885 down, how long did you have charge of the wharf, Mr. Webster?

A. Till 1894.

Q. How long was the Carroll wharf used as a wharf?

A. 1892 it was—built a new wharf here in '92.

Q. When was it used as a wharf?

A. Then we moved away from that wharf that fall.

Q. Moved from the Carroll wharf? [69—29]

A. Yes, up to the new dock up here. (Indicating.)

Q. In 1894? A. Yes, in the fall of 1894.

Mr. GUNNISON.—Q. Did you say 1892?

A. 1892, we built the wharf.

Q. And you say you had charge till 1894?

A. Yes.

Q. (By Mr. BAYLESS.) And the Carroll wharf

(Testimony of Edward Webster.)

was used as a wharf until 1894?

A. Well, the Alki—the last it was used there was the Alki, unloading some stuff for up the basin.

Q. When was that?

A. Well, if my memory serves me right, it was somewhere about 1895, something like that.

Q. During the period from 1885 to 1894 where did all the seagoing vessels coming to Juneau land?

A. Well, they landed at the old Carroll wharf.

Q. During that period how much of the tide lands were claimed by Captain Carroll or his successors in interest?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, not the best evidence of the claim, and that, further, it is not the proper way to show—that is, not by claiming, but being the user of the tide lands.

The COURT.—Well, you have a cross-examination of this witness, Judge Gunnison. You can bring out on cross-examination what the source of his knowledge is. Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) I asked you if you knew how much of the [70—30] tide lands in front of the Carroll-Murray wharf site were claimed by Captain Carroll, or his successors in interest, between 1885 and 1894.

The COURT.—Between 1885 and 1894?

Mr. BAYLESS.—Yes, that is, during the period when Mr. Webster had charge of the dock.

The COURT.—Objection sustained.

(Testimony of Edward Webster.)

Q. (By Mr. BAYLESS.) Do you know how much of that ground was actually occupied by Captain Carroll and his successors in interest between 1885 and 1894?

A. About 80 feet of it on the face.

Q. The rest of the wharf site was not occupied in any way? A. No, sir.

Q. Was anyone else occupying it? A. No, sir.

Mr. BAYLESS.—Your Honor will not permit me to ask him the extent of the Captain Carroll claim there during that period.

The COURT.—Between 1885 and 1894?

Mr. BAYLESS.—During the time he had charge of it.

The COURT.—Q. I understood you to say you went there in 1885.

A. (By the WITNESS). Yes.

Q. What part of the year?

A. In the fall of 1885.

The COURT.—An objection will be sustained to that question.

Q. (By Mr. BAYLESS.) Have you been acquainted with the property ever since 1885?

A. Well, I can't say that in everything that was going on it, no.

Q. Do you know whether or not the Pacific Coast Company, since [71—31] it bought the property, has claimed it—claimed these tide lands in dispute?

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

(Testimony of Edward Webster.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not anyone has occupied this beach prior to 1906?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and too indefinite as to the ground or beach referred to.

The COURT.—Oh, well, when you say this beach, you mean this 600 feet in dispute.

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We submit there aren't 600 feet in dispute; there are only 113 feet.

Mr. BAYLESS.—I will limit that to the 113 feet in dispute.

The COURT.—Now, your question is: "Who occupied that prior to 1906?"

Mr. BAYLESS.—Yes.

The COURT.—Objection overruled.

Mr. GUNNISON.—We don't object to that question, your Honor.

Q. (By Mr. BAYLESS.) Do you know if anybody occupied that? A. In what year?

Q. Prior to 1906.

A. Well, there was—I think that Mr. James was occupying it for a while there, landing stuff when he had the Sheep Creek Mill.

Q. Had anybody else landed there? [72—32]

A. Well, in 1906 I think the Perseverance people landed some stuff on the beach there, built a little gridiron there and landed some stuff there.

Q. Well, from 1885 down to 1906, do you know the occupant of the property in dispute here where

(Testimony of Edward Webster.)

Mr. James has his gridiron?

A. The only one I know of was Mr. James. In 1884 I drove for Mr. James two piles there to tie up his scows to.

Mr. GUNNISON.—Q. In 1884?

A. 1894, I mean.

Mr. GUNNISON.—Q. 1904 you mean?

A. 1904, yes.

Q. (By Mr. BAYLESS.) In 1894 you drove some piles for Mr. James?

A. Yes, I drove two piles to tie up his scows to; there was nothing else on the beach there then.

The COURT.—Now, gentlemen, don't let a thing like that go into the record when you both know it is a mistake. We want the truth—we don't want these quibbles.

Q. It was in 1904 and not 1894.

A. (By the WITNESS.) 1904, yes.

Q. (By Mr. BAYLESS.) You don't know whether or not the Pacific Coast Company ever occupied this 113 feet, which is in dispute in this case at any time.

A. No, I don't think they ever did.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Those piles which you drove in 1904, Mr. Webster,—I don't mean in 1904, I mean in 1887, were driven where.

A. One on the boundary line at the west end and one at the east end. [73—33]

(Testimony of Edward Webster.)

Q. That is, one on the boundary toward town and the other one the other way from town? A. Yes.

Q. Those were driven where with reference to the line of mean high tide?

A. Well, I would take it about a minimum tide.

Q. Minimum high? A. Yes.

Q. And I understand you to say that there were no marks of boundaries below that line when you came there that you are acquainted with—that you saw? A. No, we never—

Q. That you saw? A. No, not that I saw.

Q. What do you say with reference to whether or not those lines—those piles were used for mooring purposes?

A. Well, they weren't used to my knowledge; they were too far out.

Q. And you were in charge of that wharf from 1885 to what year? A. 1894.

Q. Now, when was the last time that wharf was used as a wharf site or for wharfing purposes?

A. Well, I think it was in 1905, if I remember correctly.

Q. Do you mean 1905? 1895—don't you mean 1895?

A. 1895, yes. It was the year the mill was built up in the basin.

Q. The Murray and Carroll wharf?

A. I don't understand you.

Q. I say—I understand you to say that the Alki was the last ship that docked and discharged at the Murray and Carroll wharf? [74—34]

A. That I remember of, yes.

(Testimony of Edward Webster.)

Q. When was that? A. In 1895.

Q. In 1895, yes, sir; and since that time it hasn't been used as a wharf? A. Not to my knowledge.

Q. Well, you have been a resident of Juneau during what period from 1885?

A. Well, I came here in 1881, to the present time.

Q. And during all that time you have lived here?

A. Yes.

Q. And you were connected with the wharf or had charge and were one of the owners of a pile driver?

A. Yes.

Q. Practically all that time?

A. Yes and no. I had—I used to hire the Treadwell pile-driver in the early days and in 1895 built a new one.

Q. What I mean to say is, you are familiar with the waterfront conditions in Juneau during all that period? A. Yes.

Q. And it is your recollection that that wharf hasn't been used—the old Murray and Carroll wharf has not been used since 1895?

A. Not for shipping purposes.

Q. For shipping purposes, I understand. Was it part of your duty as wharfinger to take the lines of the ship? A. Yes.

Q. And you helped moor most of the vessels that came in? A. Yes, sir.

Q. During the time you were wharfinger, did you?

A. Yes, sir

Mr. GUNNISON.—That is all. [75—35]

(Testimony of Edward Webster.)

Redirect Examination.

(By Mr. BAYLESS.)

Q. You are certain, Mr. Webster, that none of the vessels that came up here between 1885 and 1894 ran head or stern lines ashore?

Mr. GUNNISON.—I object to that.

The COURT.—I didn't understand the question.

Mr. BAYLESS.—I asked him during the period between 1885 and 1894 whether any of the vessels which tied up to the Carroll dock ran head or stern lines ashore.

The COURT.—What is your objection.

Mr. GUNNISON.—It is leading—object to it as leading and suggestive.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) None of these vessels which came up here while you had charge ran head or stern lines ashore?

A. I don't remember ever tying onto the shore or running lines out. It would take about 900 feet of line.

Mr. GUNNISON.—There is one more question I would like to ask. I presume it is properly cross-examination.

Mr. BAYLESS.—I am not quite through yet.

Mr. GUNNISON.—Well, it would be cross-examination and I wanted to ask permission to ask it.

Q. (By Mr. BAYLESS.) Did these vessels tie up to anything else except the wharf itself?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

(Testimony of Edward Webster.)

A. I don't remember ever tying to the shore.

Q. Did they tie up to anything else? [76—36]

A. No, to the wharf.

Q. Nothing else?

A. Well, you see, there was piles along it, edge of the coal-house, still on the wharf—put the stern line there and the other line up the other side, but that still was the wharf part of it.

Q. How far from the face of the wharf were those piles? A. Which piles?

Q. These two piles you say they tied up to.

A. That was about 140 feet.

Q. Were those piles on the tide lands?

A. No; they were driven into the corner. One was just—it wasn't a pile; it was just a mooring we made there at the corner of the old dock—coal-house.

Q. Mr. Webster, will you show the Court where these vessels tied up? Just take a pencil and show how it was done.

A. (Indicating.) Right in here on this corner. Right there we had a business we connected to. That is all logs under that end.

The COURT.—This is the face?

A. Yes, and we had piles in here and here and here.

Mr. GUNNISON.—Just mark it so it will show, because the report doesn't show it very clearly.

A. Where I have marked with a cross was the mooring place. There is one there at the corner of the coal-house and one here. (Witness indicating on map.)

Q. (By Mr. BAYLESS.) That is to say, they

(Testimony of Edward Webster.)

tied up the vessels lying in front of the face of the dock with these six cross marks?

A. Yes. [77—37]

Q. And they didn't tie up these vessels at any other spot?

A. Yes, there was another one over there (indicating). There was—there one and that is the other one.

Q. This represents Mr. James, gridiron? (Indicating.)

A. That is about the position of them. These are the piles.

The COURT.—You have marked them all with an "X" and you have just now testified that you moored to the place marked "X." Mark those two piles with an "O."

Mr. GUNNISON.—If the Court please, this exhibit was used in the preliminary hearing and I think this "X" and this "X" were put on there by some one else.

A. (By the WITNESS.) That is where they were (indicating).

Q. (The COURT.) The round circles with a "X" in the middle. A. Yes, sir.

(Admitted and marked "Pltff's. Ex. #19.")

Q. (By Mr. BAYLESS.) Did you say, Mr. Webster, that from 1885 until 1894 the Pacific Coast Company and its grantors had not been in possession of the ground in dispute in this case?

A. You didn't ask me that. I didn't say wasn't

(Testimony of Edward Webster.)

in possession. You asked me whether they had made any improvements.

Q. Well, do you know whether they were in possession of the property claimed by Mr. James?

Mr. GUNNISON.—Object to that as incompetent, irrelevant, and immaterial, and suggestive.

Mr. BAYLESS.—Already gone over by counsel.

The COURT.—The question is objectionable because it calls for a conclusion of the witness. What is possession? Ask him whether they had anything on it—what did they do with it—what sovereignty did they exercise over it. Possession is a question of law—depends upon the facts.

Mr. BAYLESS.—That is all. [78—38]

Recross-examination.

(By Mr. GUNNISON.)

Q. Just one question, your Honor. This is really cross-examination—I forgot it at the time. Did the wharf, the approach, or the T of the Murray and Carroll wharf extend over or upon the 113 feet in question in this case? A. It does not.

Q. Or did the building which you refer to as the coal-house on Plaintiff's Exhibit No. 19, or any other structures indicated on that map in connection with this wharf, project over or were they on any part of the 113 feet in question?

A. The building there is the present foundry.

Q. Even that isn't on the 113 feet?

A. No, there is a lot and a half in between there.

Mr. GUNNISON.—That is all.

(Witness excused.) [79—39]

[Testimony of C. W. Wells, for Plaintiff.]

C. W. WELLS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Just state your name and residence, Mr. Wells.

A. C. W. Wells. Well, I don't know whether I am living here or in Seattle—I am in both places now.

Q. When did you first come to Juneau?

A. Fall of '80; 5th day of December, 1880, I think.

Q. Well, how long did you reside in Juneau?

A. At that time I didn't stop only about four or five days. After I made locations up here by the Ebner property, I went back to Sitka and worked there all winter, and came back in April.

Q. In April, 1881? A. 4th of April, yes.

Q. Do you know the property known as the Carroll-Murray wharf site in Juneau?

A. I ought to; they owe me ninety dollars yet on it for the iron work.

Q. When did you first become acquainted with it?

A. Well, I became acquainted with it at the time Frank started the contract to build it.

Q. When was that?

A. It was in August or September, 1881.

Q. When was the wharf started to be built?

A. That was the fall it started to be built.

Q. 1881?

A. And it cost \$1,800 to build that wharf. [80—
40]

(Testimony of C. W. Wells.)

Q. When was the wharf completed?

A. I think it was in the spring of '82.

Q. Did the sea-going vessels land at that wharf?

A. They did, after the wharf was completed.

Q. How long was that wharf used as a wharf?

A. Well, it was used up to the time they built that new wharf in front of Main Street.

Q. Do you know when that was?

A. No, I couldn't exactly say, couldn't tell the year exactly.

Q. What buildings were put upon the wharf site and where were they situated?

A. Well, up to '83 there was one building and that was the main building on the wharf, extending out a little on the cribbing too quite a ways.

Q. Do you know the boundaries of that tract?

A. Yes, in a way I do.

Q. Do you know where those boundaries were?

A. Well, they were supposed to be 300 feet from center to center of the wharf.

Q. Do you know when those boundaries were first defined? A. I do.

Q. When was that?

A. In '83, fall of '83; I don't know whether the fall or August, '83, some time around there.

Q. Do you know how those boundaries were defined?

A. Defined by putting in two piles and I don't know whether they were put in with a pile-driver or sunk by men.

Q. Where were you when those piles were being

(Testimony of C. W. Wells.)

driven? A. At the shop here in Juneau.

Q. Did you ever see those piles?

A. Yes, sir. [81—41]

Q. Will you describe those piles to the Court, what they looked like?

A. Well, posts put in there to, I suppose to—

Mr. GUNNISON.—We object to anything he supposes—

A. Well, they were put in there—

Mr. GUNNISON.—Just a moment. We object to the testimony of the witness unless he testifies as to what he knows—not as to what he supposes or what they were supposed to be for.

A. I know that the boats tied up there.

Mr. GUNNISON.—Just a moment. The question was: What did those pile look like.

A. The piles were between twelve and fourteen inches, looked to me to be that, and about five or six feet above the ground.

Q. (By Mr. BAYLESS.) And where were those piles placed?

A. Put just far enough below high tide for a team to go past there.

Q. Do you know how those piles happened to be placed there? A. I do.

Q. How was that?

A. Well, there was some party talking about locating there. It was done at the time old man Edwards had charge of the wharf and I overheard a conversation and I told him he had better put something in there to define it and he says “I am going to get

(Testimony of C. W. Wells.)

Murray to put something there to tie up the boats to and it will do for boundary lines too." That is what he told me.

Q. I hand you Plaintiff's Exhibit No. 19, a map, and ask you if you can—

A. I don't know much about maps.

Q. If you can identify the old Carroll wharf site and the old [82—42] Murray-Carroll wharf buildings on that picture?

A. Yes, it is right here. Supposed to be about 40 by 60, around that—I never measured it.

Q. Do you know where—can you mark the position of these two piles?

A. There was one on the southwest corner, 300 feet from the center of the wharf down in here, and the other one up toward town 300 feet, pretty close to Pete Jumbo's cabin. He had a cabin on the upper side and it joined on Carroll's wharf site.

Q. Were those piles put on the tide lands? Do you know where they were put?

A. They were put in low enough to let a team pass.

Q. What I am trying to get at is, were those piles on tide lands?

A. Yes, on tide lands. Covered a good deal when it was high water, these piles wouldn't be, but the ground was covered.

Q. Do you know how these vessels which came to Juneau in the early days—which ships came to Juneau in the early days and how they tied up?

A. There was no boats come here but the Pacific

(Testimony of C. W. Wells.)

Coast Steamship Company that I know of.

Q. Were those vessels tied up to the wharf after the wharf was built.

A. Not for a year afterwards. They tied up on long lines to stumps. I have seen them take lines ashore on a boat and tie them on shore on a stump there—throw a line over a stump.

Q. Well, where were those stumps situated?

A. Some on the south side of the wharf and some on the north side.

Q. Where were they with reference to these piles you have just testified to? [83—43]

A. Higher up the bank.

Q. Were they close to these piles or far away?

A. Twenty-five or thirty feet or so.

Q. After these piles were driven were they used for any purpose?

A. I repeatedly seen them take a small boat and take it over to the pile and throw it over.

Q. Do you know where Mr. James' gridiron is now?

A. I don't know whose it is, but I know there is a gridiron down there.

Q. Well, did one of these piles stand anywhere near that gridiron?

A. Stood pretty close to Charley Norstrader's wharf there. The gridiron—the plank road there now would cover it.

Q. Well, how did they get a line ashore to that post?

A. In a small boat. Couldn't possibly get it any

(Testimony of C. W. Wells.)

other way, because the wharf building was so close up to the bank.

Q. How did they get the line ashore to the one on the other side?

A. Same way; had to take it there, around just the same. Sometimes they tied up to the wharf when it wasn't rough weather, but when they had a large amount of freight they put out a line that way.

Q. Was this done prior to May 17, 1884?

Mr. GUNNISON.—Object to that as leading.

A. Well, it was done to my knowledge in '83; that was the fall of '83 while Edwards had charge of the wharf.

Q. Was it done prior to '83?

A. I couldn't say.

Mr. GUNNISON.—Object to that as leading.

The COURT.—Just a moment. Don't ask him leading questions about things that go to the gist of the controversy. This witness answers leading questions before the Court can warn him. Don't ask leading questions about a matter that is a part of the controversy. [84—44]

Q. (By Mr. BAYLESS.) Mr. Wells, was the—do you know how long the practice of mooring vessels by—
A. The what?

Q. Tying up the vessels to the wharf by means of these head and stern lines ashore was followed?

Mr. GUNNISON.—Just a minute. We object to that as incompetent, irrelevant, and immaterial; there is no evidence of any practice.

The COURT.—The question is competent, but the

(Testimony of C. W. Wells.)

last part of the objection will be sustained. There is no evidence that there was any practice. This witness hasn't testified to that. You might ask him how many times it was done, how often he had seen it done, but don't use the word practice. There is no testimony that there was any practice.

Q. (By Mr. BAYLESS.) Where did the vessels which came to Juneau until 1894 land?

A. Landed? Sometimes landed out in the channel.

Q. Was there any other wharf besides the Carroll wharf here?

A. No, sir, there wasn't, and they loaded freight on the scows here before the wharf was built.

Q. During this time how did they tie up to the dock?

A. No vessel tied up to the dock when they loaded on scows.

Q. I mean after the wharf was built until they moved over to the new wharf—how did these vessels tie up to the dock?

A. Well, it is pretty hard for me to remember back thirty-three years how they tied up to the wharf. Sometimes they would tie up with the bow south and sometimes with the bow north.

Q. How much of the time did they run lines ashore?

A. That I couldn't say. I seen it most every time I went down there. I had occasion to go down there to look after my [85—45] freight and the purser, McDonald, always attended to my business.

(Testimony of C. W. Wells.)

Q. Was that done by all the boats which landed at the dock?

A. Well, I couldn't say with reference to all the boats or not, but I have seen it done repeatedly with the "Idaho," the old "Anchon" and—no, I don't believe the "California" tied up there; she might have done so as far as I know of; the "Idaho"—that was the boat Captain Hunter was on.

Q. Well, the boats which came up in 1882 and 1883 tied up in that way?

A. Yes, I have seen them take lines ashore repeatedly in small boats and throw them over those piles that was driven. I don't know whether they were driven or whether they dug holes and sunk the posts.

Q. And that was done all the time the wharf was used?

Mr. GUNNISON.—Object to that question as leading and suggestive—directly contrary to the caution of the Court.

The COURT.—Yes, I think so.

Q. (By Mr. BAYLESS.) Well now, Mr. Wells, what was done with reference to tying up the boats between 1882 and 1894?

A. Well, they would come there and land. They had three piles on the back end of the wing, on each end of the wing; they would sometimes tie up to that, but when it was bad weather or the boat was going to stop all night, they would most always go over to those piles in a small boat with the line.

Q. Was that done in 1894?

A. Yes, it was I think—yes, I am positive it was

(Testimony of C. W. Wells.)

done in 1894, in 1893, fall of '93.

Q. Now, Mr. Wells, was anybody outside of the Pacific Coast Company using this wharf site during that time?

A. That I couldn't say. [86—46]

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and too general. It should be confined to the ground in controversy.

The COURT.—Confine it to the ground in controversy, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. Wells, from 1882 down until they moved over to the new wharf, which was in 1894, did anybody occupy the ground now claimed by Mr. James?

A. No, not that I know of, only the Carroll wharf site 600 feet square there.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—There is no evidence that he knows what ground is claimed. Ask him what the ground in dispute is. Then you may ask him whether or not anybody occupied it between the dates in question.

Mr. BAYLESS.—I thought I had done all that.

The COURT.—No, you didn't.

Q. (By Mr. BAYLESS.) You know where this gridiron is? (Referring to map.)

A. Yes, close to that old foundry.

Q. Do you know who claims that ground?

A. Well, I suppose Mr. James does.

(Testimony of C. W. Wells.)

Q. How long have you been acquainted with that ground there?

A. I have been acquainted with that ground since the spring of '80.

Q. Is that ground part of the old Carroll wharf site? A. Yes, sir.

Q. Was anybody occupying that ground in 1880?

A. No, sir, not unless it was a man in a small boat getting an outfit out to go out prospecting. [87—47]

Q. Was anybody occupying it in 1881?

A. No, only Indians.

Q. Was anybody occupying it during the years 1882 to 1894?

A. Nothing except for Frank Starr to get his piles there to get ready to drive.

Q. Who was Frank Starr?

A. The man who started to build the wharf for Carroll.

Q. Was this property used in any way in connection with the wharf?

A. It was used for piles and for tying up the boats.

Q. Was it used for that purpose from the time the wharf was built until the time the wharf was abandoned as a wharf?

Mr. GUNNISON.—Object to that as suggestive.

The COURT.—It is grossly leading.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Wells, you came here in 1880?

(Testimony of C. W. Wells.)

A. Fall of '80, yes.

Q. And returned in the spring of 1881?

A. Yes.

Q. How old were you then, Mr. Wells?

A. Well, I was about thirty-three years old.

Q. Now, what was your—what business were you engaged in at that time?

A. Mining and blacksmithing, both.

Q. You had a shop here in town?

A. I did. [88—48]

Q. Where was it?

A. Right where the Juneau Liquor Company's store is now.

Q. Now, you said you had an arrangement with Mr. McDonald, the purser of the "Idaho," to attend to your business matters for you in Portland?

A. Yes, sir.

Q. And you went to see the "Idaho" land each time?

A. Well, I would go down every boat; I would go to get my stuff; I would go down to get a list of my freight.

Q. Every boat that came?

A. Yes, whenever I sent for it.

Q. Did you have shipments on every boat?

A. Well, more or less,—coal—we only got a boat a month.

Q. How often did the "Idaho" come up?

A. About once a month.

Q. How large was she?

A. Oh, I don't know; I never measured her.

(Testimony of C. W. Wells.)

Q. Was she over 200 feet? A. I couldn't say.

Q. Do you know how far she projected over the face of the wharf?

A. Well, she might go probably 60 feet at each end, each way.

Q. Now, how often is it your recollection would they take stern and bow lines ashore and moor to those piles which you have described?

A. How often?

Q. Yes, sir.

A. I couldn't tell you how often, but I repeatedly seen them do it.

Q. I think you said up to 1883 they took the lines ashore and fastened them on stumps.

A. Yes, I seen them put them on stumps. [89—49]

Q. Those stumps were above the line of high tide?

A. They were up on the bank.

Q. How far were they from that center pin or stake in the Murray-Carroll wharf site?

A. They might be 150 or 200 feet.

Q. On either side? A. On each side.

Q. Now, in 1883 and 1884 what was there on the south side of the Murray and Carroll wharf?

A. There was Indians.

Q. How far down did their town go?

A. The town went down as far as the old butcher-shop was.

Q. About where the sawmill is?

A. No, didn't go down that far. Not any further than the gasoline-house is there.

(Testimony of C. W. Wells.)

Q. Was there any road down there then?

A. Just as nature made it.

Q. No wagon road below there?

A. You could drive a wagon there.

Q. But there was no road there? A. No.

Q. What was there below there that made it necessary to drive wagons?

A. Well, I didn't say they drove wagons, but they drove wagons to the wharf.

Q. Certainly. Now, do you know who the wharfinger was after 1884 at the Murray and Carroll wharf?

A. I think there was a man a short time before Mr. Webster had it.

Q. Mr. Webster was wharfinger there for a long time? A. Oh, I know he was.

Q. Now, how often did you go during that time to which you have [90—50] testified below the wharf, that is, south of the wharf?

A. How often did I go?

Q. Yes.

A. Oh, I would probably go down that way three or four times a week.

Q. And when a vessel was in port did you go below or would your journey end at the wharf?

A. My journey ended at the wharf. Of course, as far as that is concerned,—

Q. What I am getting at is, how much occasion or how often did you have occasion to go down far enough to see the method of mooring vessels by stern or bow lines to these piles?

(Testimony of C. W. Wells.)

A. I could see that from the boat itself.

Q. From the boat?

A. Yes, you could see it from the wharf without a man shut his eyes.

Q. Now, there was a boat a month.

A. Yes, a boat a month.

Q. And every time a boat came here they moored at that place, did you say?

A. I didn't say every time.

Q. How often?

A. I say when they had a lot of freight to discharge they moored that way.

Q. You mean after they had moored the vessel so as to discharge from a forward or after hatch, when they had moved it so that they couldn't hold both the bow and stern to the wharf, after they moved her back—moved her astern—they took the stern line ashore, so there was more of the vessel on one side?

A. They took the stern line ashore. [91—51]

Q. Well, when a vessel lay fairly in front of the wharf, the "Idaho" and "Anchon," would they moor to these piles in ordinary weather?

A. Not in ordinary weather, wouldn't have to.

Q. Wasn't necessary, was it?

A. No, not in ordinary weather, but when they had lots of freight or rough weather they always moored there.

Q. But the mooring in rough weather there was for the precaution—safety of the ship?

A. Certainly, I suppose it was.

Q. Mr. Wells, between the times—I will withdraw

(Testimony of C. W. Wells.)

that question. You say there was about a vessel a month? A. Just about.

Q. As you recall it. Now, to what use was the ground to the south, the beach, the tide lands to the south of the Murray-Carroll wharf put between the times those vessels arrived and departed—I mean between the departure of one vessel and the arrival of another—between the years 1881 and 1894?

Mr. BAYLESS.—Object to that as immaterial.

A. Well, I do not know; they may have used it for several things as far as I know.

Q. I am asking what you know.

A. I don't know what it was used for only just for mooring boats.

Q. And you never saw the owners of the wharf site use it for any other purpose?

A. Only when driving the wharf they had piles around there.

Q. That was in 1882? A. Yes, sir.

Q. Other than that there was no use of that other than an occasional mooring of vessels in bad weather. [92—52]

A. Yes, that is all I know of.

Q. You say you know where the gridiron of Mr. James is on the waterfront? A. Yes, sir, I do.

Q. Did any portion of the wharf, the approach, the T, or face of the wharf, or any of the wharf buildings extend over the ground occupied by that gridiron and its approach, or in front of that gridiron or its approach?

A. Well, it occupied where this pile was drove,

(Testimony of C. W. Wells.)

interfered with that.

Q. You mean that if they attempted to moor a boat there now it would interfere with it? A. Yes.

Q. But you don't mean to say that either the wharf or approach was on any part of the gridiron or in front of that?

A. Only the pile. Of course, you couldn't get a rope ashore there—you couldn't take the hawser now and throw it on the pile, because that would be in the way.

Q. Do you know when that was put in?

A. What, the pile?

Q. No, this gridiron.

A. Well, I have a faint recollection, but I couldn't say exactly the year.

Q. I am asking you now whether the wharf itself, the old Murray and Carroll wharf, or any of the buildings connected with the Murray and Carroll wharf, were on any part of the tide flats which are now either occupied by Mr. James' gridiron or on the tide flats in front of it?

A. I don't think there was. I don't believe the wing extended out that far; it would come pretty close to it, that is, where the molding is now. [93—53]

Q. Did that wharf extend straight out from that center stake?

A. Well, the center stake was under a great big stump right in front on the upper side of the road, as far as I can recollect.

Q. The stake was in what was supposed to be the center.

(Testimony of C. W. Wells.)

A. It was supposed to be the center of the wharf site, as near as I can recollect.

Q. And the wharf went straight out at right angles from the shore from that point.

A. Well, it might vary a little and may not.

Q. What is your recollection?

A. Well, I think it was pretty near straight out.

Q. And you say the wharf was about how wide—how wide was the face of it?

A. Well, I think the T was something like 60 feet long and about 40 feet wide.

Q. That is, the face would be about 60 feet long?

A. About 60 feet long, yes.

Q. So that would be 30 feet on each side of the stake if that went out straight?

A. Yes, if the wharf went out straight.

Q. Mr. Bayless asked you if you knew what ground was claimed by Mr. Webster.

A. Was claimed by Mr. Webster?

Q. I don't mean Webster, I mean Mr. James.

A. Well, I suppose the ground was claimed there where he has got that gridiron.

Q. Do you know how long he has claimed it?

A. I forgot how many years now. I remember it was on there quite a while.

Q. You haven't any recollection as to how long he used it? [94—54]

A. No, I couldn't say—five or six or seven years.

Mr. BAYLESS.—I object to that as improper cross-examination.

Mr. GUNNISON.—That may be our case in chief.

The COURT.—Yes, I think so, Judge Gunnison.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—I will withdraw that. That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Mr. Wells, was it possible to tie up these vessels which docked at the Carroll wharf in rough weather except to the dock itself?

Mr. GUNNISON.—Object to that question on the ground that it is irrelevant, incompetent, and immaterial, and that counsel has not qualified Mr. Wells to answer any such question.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Wells, in rough weather how would all these vessels tie up?

A. How?

Q. Yes. Say when the weather was rough and the wind blowing, how would these vessels tie up at the Carroll wharf?

Mr. GUNNISON.—Object to the question on the ground that it is irrelevant, incompetent, and immaterial.

The COURT.—The question is objectionable because it is a repetition. You have gone all over that on your direct examination. Ask him another question.

Q. (By Mr. BAYLESS.) Mr. Wells, did you ever hear of anyone making a claim of ownership to the tide lands in dispute in this case adverse to the Pacific Coast Company? [95—55]

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial.

(Testimony of C. W. Wells.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not the Pacific Coast Company and its grantors, Captain Carroll and others, claimed the property in dispute from 1881 down to date?

A. Down to date?

Q. Down to the present time.

Mr. GUNNISON.—Wait a minute, Mr. Wells. We object to that question on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence.

The COURT.—Objection sustained.

Mr. BAYLESS.—If the Court please, I think we are entitled to prove that our predecessors in interest, of the plaintiff company, made claim of ownership prior to May 17, 1884, the date of the Act.

The COURT.—Yes, but you didn't ask him that question. You asked him regarding all the time from 1881 to the present time. If you confine your question as to whether or not they claimed it—and he knows they claimed it—from 1881 to the passage of the Act of 1884, another question might be presented, because the Act of Congress says "persons claiming," but when you ask the question embracing all the time from 1881 to the present time—"Do you know whether they claimed it?"—I sustain the objection.

Q. (By Mr. BAYLESS.) Do you know whether or not Captain Murray and Captain Carroll and the people who owned this wharf site and claimed to own it from 1881 until after 1884?

(Testimony of C. W. Wells.)

Mr. GUNNISON.—We object to the question on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence [96—56]

The COURT.—From 1881, the time they built it, to the Act of, I think it is, May 20, 1884.

Mr. BAYLESS.—May 17, 1884.

The COURT.—I will allow you to ask the question if he knows who claimed that property between 1881 and May 17, 1884. Now, as to who claimed it after that time is not competent and I will rule out any question such as that.

Q. (By Mr. BAYLESS.) Do you know who claimed this piece of property between March, 1881, and May 17, 1884?

Mr. GUNNISON.—We ask the witness to answer that either yes or no.

The COURT.—The question is whether you know who claimed it—you can answer it yes or no.

A. (By the WITNESS.) Yes, sir, I do.

Q. Who was it? Who claimed it?

Mr. GUNNISON.—Object to it on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Who claimed it?

A. Murray.

Q. During all that time? A. Yes.

Mr. BAYLESS.—Your Honor will not allow me to ask who claimed it after that date?

The COURT.—No.

Mr. BAYLESS.—That is all, I think, Mr. Wells.

(Testimony of C. W. Wells.)

Recross-examination.

(By Mr. GUNNISON.)

Q. How do you know that Murray and Carroll claimed that ground [97—57] between 1881 and 1884? Wait a minute, counsel isn't here.

The COURT.—Well, proceed with the case, Judge Gunnison. Counsel knows the case is being tried, and if he goes away he will have to take the consequences. (Counsel returns.)

Q. How do you know that Murray and Carroll claimed that ground, the ground in controversy; that is, the 113 feet in controversy, between 1881 and 1884?

A. By getting my money from them, payments for what work I did there.

Q. What work did you do?

A. I done all the iron work.

Q. On what? A. On the wharf.

Q. You say that wharf didn't extend over that ground in controversy?

A. Oh, I don't mean that; I mean the 600 feet—the width on the face of the tide land they claimed at that time.

Q. How do you know they claimed it?

A. Well, that is what he put in those posts for.

Q. Who put in those posts?

A. Carroll, to show his boundary line.

Q. How do you know they were to show the boundary line? A. He told me he did.

Q. Do you know whether he put them in himself?

A. Martin Murray put them in.

(Testimony of C. W. Wells.)

Q. I thought you said Carroll.

A. No, sir, his partner Murray.

Q. And Carroll told you?

A. He said he would see that Murray put them in. [98—58]

Q. When was that? A. In '83.

Q. And you are sure those piles were put in in 1883?

A. Yes, sir, those two piles were put in '83 some time.

Q. Do you know who drove the piles?

A. I didn't say they were drove; they might have been dug.

Q. Who put them in? A. I don't know.

Q. If those piles weren't put in until 1887—

A. Then they wouldn't need any piles at all if they didn't put them in before '87; could tie up with—

Q. They were put in to mark the boundary?

A. Put in to mark the boundary and tie the boats to.

Q. And you say you know that Carroll and Murray claimed that ground because they paid you for your work? A. They claimed the wharf site.

Q. And that is the basis of your knowledge of the wharf site?

A. That is all I know about it. They told me themselves they owned it.

Q. Did they ever go with you and mark out the boundaries?

A. They never did because I didn't have anything

(Testimony of C. W. Wells.)

to do with the wharf—all my work was in town and up in the basin.

Q. And your knowledge of that is only what somebody told you?

A. What they told me themselves.

Q. But they told you they were going to put in some piles?

A. I told them they had better put some posts in and he said he was going to have some posts put in anyhow to anchor his boats to.

Q. Then after that there was some piles put in?

A. Two piles put in, one at each side, I said.
[99—59]

Q. Certainly—I don't want to have any controversy with you, Mr. Wells.

A. I am here to tell the truth.

Q. I am not asking you not to.

A. Because I know what I am going to tell.

Q. Those piles that you saw put in there—did either Mr. Murray or Mr. Carroll take you out and say, "These are the piles I had put in and set"?

A. Carroll showed me the piles himself.

Q. He did, afterward?

A. After they put those piles in.

Q. After you had a talk with him? A. Yes, sir.

Q. That was in the fall of 1883?

A. '83, yes, sir.

Q. That was the time—when was it you said the wharf was built?

A. Well, the wharf was started in '81.

Q. And finished in 1882?

(Testimony of C. W. Wells.)

A. Spring of '82 and Neil McArthur came over here.

Q. And you think the old "Idaho" extended about 60 feet on each side of the wharf?

A. Might have been 60 or more, I couldn't say—I never took her dimensions.

Q. But she is the ship—

A. And her and the "Anchon"—

Q. What was about the size of the "Anchon"?

A. I suppose it was about the same width as the "Idaho."

Q. And it was from those two vessels that the bow and stern lines were taken ashore and fastened to these piles?

A. Yes, the "California" and the "Eureka," she was there—Captain Hunter was on her. [100—60]

Q. Did you read the testimony of Captain Hunter in this case before you took the stand?

A. No, sir. I never knew anything about the case until a day or two ago.

Mr. GUNNISON.—That is all.

(Witness excused.) [101—61]

Mr. BAYLESS.—If the Court please, I have a couple depositions here, Captain Hunter's and another, which I would like to read.

Mr. GUNNISON.—That Captain Hunter deposition was the one we took here.

The COURT.—Taken in open court. I don't think so, Mr. Bayless, you took it before me.

Mr. BAYLESS.—Very well, it hasn't been read.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—It was taken under stipulation.

Mr. BAYLESS.—If the Court please, the matter reads:

“If the Court please, in the matter of the case of the Pacific Coast Co. vs. George E. James, Captain J. C. Hunter is present and I desire to have his testimony taken at this time and I think it may be stipulated that the testimony of Captain Hunter may be taken in open court at this time and used at the trial of the case.

The COURT.—Not in open court. I am willing to hear the testimony of Captain Hunter, if you gentlemen stipulate that the record may be made up and used at the trial, but not taken as in open court.” And down further: “The testimony is being taken before me just as if it were before a notary public.”

The COURT.—I guess that is right, Judge Gunnison.

Mr. GUNNISON.—Well, I haven't any objection to the introduction of it.

Mr. GUNNISON.—This deposition of Captain Lloyd, if your Honor please, I haven't seen and I would like to have a few moments to read it over so I might know whether to interpose an objection.
[102—62]

The COURT.—How long has it been on file?

Mr. BAYLESS.—I do not know, your Honor.

The COURT.—Ever since June 10, 1914, this deposition has been on file here. Either one of you could have read it at any time.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—Your Honor remembers I left here for Skagway and was gone nearly a month.

The COURT.—Yes, but you had a partner here.

Mr. GUNNISON.—Yes, but my partner was in Skagway with me.

The COURT.—Well, we will take a recess for ten minutes.

(Whereupon the Court took a recess for 10 minutes.)

C. W. WELLS, being recalled to the stand on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Wells, I hand you a map which purports to show the situation of the old Carroll dock and other property, and I ask you if the diagram showing the “City of Topeka” lying up at the old wharf is the way the “Topeka” was sometimes moored and other vessels were sometimes moored?

Mr. GUNNISON.—We object to the question in the first place as leading and suggestive; in the next place, there is no evidence that this witness ever saw the “Topeka” there or knows how she was moored, or knows her dimensions, and further that the statement of counsel that that purports to represent something is an improper statement and the witness, if he testifies to the character of the map, should be asked to testify to what it is and to identify it himself or explain it and say from an examination of it whether he knows what it represents.

(Testimony of C. W. Wells.)

Mr. BAYLESS.—The witness has already testified that that was done and I merely offer that picture as an illustration of the witness' testimony.

Mr. GUNNISON.—That is a map; that isn't a picture.

Mr. BAYLESS.—I haven't proven the accuracy of the map, Judge, at all. I merely use it as a picture.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Is that the way the "City of Topeka" used to land there at the old wharf?

Mr. GUNNISON.—We object to that as leading and suggestive, incompetent, irrelevant, and immaterial. There is no evidence that he knows the "Topeka" or saw her land there.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. (By the WITNESS.) Well, of course, the "City of Topeka" wasn't running in '94; you know the "Alki"—

Mr. GUNNISON.—We object and ask to have the testimony stricken.

A. The "Topeka"—

The COURT.—Just a moment. You say the "Topeka" wasn't running in 1894?

A. She wasn't running in 93, or 94, or '92, but she had tied up similar to that.

The COURT.—Q. To that same wharf?

A. Yes.

(Testimony of C. W. Wells.)

The COURT.—Motion denied.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Was that the way the ships were moored?

A. That is the way the “Anchon” and the “Idaho” used to moor and any one would be blind without he could see them, see those boats. [104—64]

Q. What are these red lines represented on here? (Indicating.)

A. They represent the lines taken ashore and put on those piles, and they were champered down—

Q. What were champered down?

A. The piles, so the rope would slip over them easily.

Q. And the boats which came up to Juneau between 1881 and May, 17, 1884, tied up at the Carroll wharf, did they tie up the same way?

A. In the same way.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, leading and suggestive.

The COURT.—It is very leading, of course, but he has gone so far with it.

Mr. BAYLESS.—This has been all gone over.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—We now offer this map in evidence.

Mr. GUNNISON.—Object to the map as incompetent, irrelevant, and immaterial, hasn't been tes-

(Testimony of C. W. Wells.)

tified to as a correct map of the location there and might be an attempt to get something in evidence of which there is no evidence.

The COURT.—I don't understand the map is offered as anything but illustrative of what he means when he speaks about the ships being moored to these piles.

Mr. BAYLESS.—For no other purpose.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—That is all, Mr. Wells. [105—
65]

Cross-examination.

(By Mr. GUNNISON.)

Q. When did the Topeka first land at the Murray and Carroll wharf?

A. I think it was the fall of 1890 or 1889. Why I know is, that it was the time of the fire in Seattle, the same fall that the "Alki" broke her back down here at Loring.

Q. Do you know anything about the dimensions of the "Topeka"? A. No, I do not.

Q. You don't mean to say that that representation on that map is correct with reference—that the representation which counsel indicated as the "Topeka," is correct according to scale or dimensions, or anything of that kind?

A. No, I don't know anything about that, but they tied up something similar to that and the other boats, the "Idaho" and "Anchon" and "California."

Q. You don't mean to say now that the "To-

(Testimony of C. W. Wells.)

peka's" dimensions are correctly put on there, do you?

A. I don't say about the "Topeka," but I say about the others.

Q. But you say that is the way they tied the bow and stern line of the boat? A. Yes.

Mr. GUNNISON.—We move to strike the map on the ground that it is incompetent, irrelevant, and immaterial, and the witness testifies the "Topeka" wasn't here until 1889 and there isn't any evidence that it is a correct representation of even the dimensions of the "Topeka."

The COURT.—Motion will be denied.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked: "Plaintiff's Ex. #20.")

(Witness excused.) [106—66]

Mr. BAYLESS.—I now offer to read the deposition of Captain H. H. Lloyd. The stipulation to take Captain Lloyd's deposition before L. V. Newcomb, a Notary Public in Seattle, Washington, was entered into on the 19th of May, 1914, by counsel for the plaintiff and the defendant.

[Deposition of Captain H. H. Lloyd, for Plaintiff.]

Interrogatory No. 1. Please state your name, residence and age.

A. H. H. Lloyd; residence, Seattle; age 75.

Interrogatory No. 2. What has been your occupation or profession? A. Master mariner.

Interrogatory No. 3. Are you engaged in any occupation or profession at the present time?

(Deposition of Capt. H. H. Lloyd.)

A. No.

Interrogatory No. 4. When did you retire?

A. About 1907.

Interrogatory No. 5. What was your occupation or profession in the years 1882, 1883 and 1884?

A. Master mariner, except in 1882.

Interrogatory No. 6. By whom or by what company were you employed?

A. I was U. S. Inspector afloat, employed between Portland, Oregon, and Alaska Ports, the year before Captain J. C. Hunter came to Juneau as master of the "S. S. Idaho." My best recollection is that Captain Hunter came to Juneau on the "S. S. Idaho" in the spring of 1884; at least it was in the spring of the year 1884, or 1885, that Hunter came to Juneau, and I became U. S. Inspector afloat, as above stated, the October before. I continued to be inspector for about nine months, and immediately thereafter I became a pilot and master on steamships of the Pacific Coast Company plying between Portland, Seattle, Juneau and other Alaskan ports. Part of the time I acted as master and part of the time as pilot, until the year 1907, [107—67] continuously, plying between ports on the west coast of the U. S. and Juneau and other Alaska ports, and as far north as Nome.

Interrogatory No. 7. Please state what ships you sailed on in the years 1882, 1883 and 1884 and the official position you occupied on such ships.

A. I did not sail on any ship in the year 1882. It was in the year 1883 or at the latest in the spring

(Deposition of Capt. H. H. Lloyd.)

of 1884, that I was U. S. Inspector on the "S. S. Idaho," "Carroll," "Master," and on the "S. S. Ancon" and then back to the "S. S. Idaho," of which Captain Hunter had become master. Those ships plied between Portland, Juneau, Sitka and other Alaskan points, and my services as inspector on those ships continued for about nine months. Immediately thereafter I became Pilot on the "S. S. Ancon" and continued to be master or pilot continuously from that time until 1907, plying between said points on various ships.

Interrogatory No. 8. Did you sail on any such ships to Juneau, Alaska, in the years 1882, 1883 and 1884? If so, state what ships and what position you occupied on the same and give the dates as near as you can.

A. As stated above, in the year 1883 and 1884, I sailed on the "S. S. Idaho" and "Ancon" between Portland and Juneau, as U. S. Inspector, and as master and pilot.

Interrogatory No. 9. Where did such ships land in Juneau in the years 1882, 1883 and 1884?

A. In 1883 and 1884 the ships above-mentioned landed at what was known at that time as the Carroll-Murray wharf.

Interrogatory No. 10. Please describe the Carroll-Murray wharf and wharf site as it existed on your first voyage to Juneau, Alaska. [108—68]

A. The said wharf consisted of a warehouse and wharf extending from the line of high tide out into the water, a distance of about 250 feet, as near as I

(Deposition of Capt. H. H. Lloyd.)

can recall. The wharf was a crib wharf. The outer part or face of the dock was in about 20 feet of water at low tide. The wharf and warehouse were substantial structures and amply large enough to answer all the demands of commerce at that time.

The COURT.—Just a moment. I don't see the necessity of reading all this. Just introduce it and file it. I have got to read it anyhow. I have to read all depositions that are put in. If you have any objections to any particular part of it, I will hear those objections now.

Mr. GUNNISON.—We object to two or three of those questions. Perhaps we will save time if we wait until to-morrow morning and I can read it over and make my objections then.

The COURT.—I will give you till to-morrow morning to make your objections and to-morrow morning I will pass on the objections and strike out what I think ought to be stricken.

Mr. BAYLESS.—We offer the deposition of Captain Lloyd in evidence, together with the map attached to it and the stipulation.

Mr. GUNNISON.—We reserve our right to make objections till to-morrow morning.

The COURT.—Very well. [109—69]

[Testimony of S. H. Ewing, for Plaintiff.]

S. H. EWING, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name, residence and occupation.

(Testimony of S. H. Ewing.)

A. S. Howard Ewing, Agent Pacific Coast Company, Juneau, Alaska.

Q. When did you first come to Juneau, Mr. Ewing? A. 1897.

Q. How long have you been agent of the Pacific Coast Company? A. Going on four years.

Q. You have been here four years as agent?

A. Yes, sir.

Q. What have your duties been as agent?

A. Looking after the Pacific Coast Company's interests and also the Pacific Coast Steamship Company's interests in the town, looking after various lands, buildings, properties.

Q. Do you know the property in dispute between Mr. James and the Pacific Coast Co.? A. I do.

Q. Do you know where it is situated? A. I do.

Q. Where is it situated?

A. Situated along the water front on Franklin Street there.

Q. With reference to the Carroll-Murray wharf site—do you know where the Carroll-Murray wharf was?

A. Yes. It is to the south of the old Carroll-Murray wharf.

Q. Is it within the exterior boundary of the Carroll-Murray wharf site? A. It is. [110—70]

Q. Do you know what the plans of the Pacific Coast Company are with reference to reconstructing the Carroll-Murray wharf? A. I do.

Q. State what they are.

Mr. GUNNISON.—We object to that as irrele-

(Testimony of S. H. Ewing.)

vant, incompetent and immaterial, and whatever plans they have are self-serving declarations and are not in any way binding upon this defendant.

The COURT.—On what theory, Mr. Bayless?

Mr. BAYLESS.—On the question of irreparable injury, if the Court please. We propose to show that we anticipate building a big dock to cover the whole face of this ground, and the reason we haven't built it before this time is because of this lawsuit, and I want Mr. Ewing to testify to that.

The COURT.—It seems to me, Judge Gunnison, that on that phase of the case it is admissible.

Mr. BAYLESS.—That is the only purpose.

A. The plan is to construct a wharf approximately 600 feet long—

Mr. GUNNISON.—We don't withdraw our objection.

A. On the old Murray-Carroll wharf site, erect a warehouse, coal bunkers, and other buildings.

Q. (By Mr. BAYLESS.) I hand you a map or plan and ask you to identify it.

A. This plan came from Seattle. It is the company's plan.

Q. Of what?

A. The proposed wharf, warehouse, coal bunkers and other buildings.

Q. How big did you say that wharf would be?

A. Approximately 600 feet in length.

Q. On the face?

A. On the face, yes. [111—71]

(Testimony of S. H. Ewing.)

Q. And how many buildings will there be on that wharf?

A. The main warehouse and the coal bunkers and there will be a space for a cold storage plant, and other buildings they want to put on there.

Q. How much will that wharf cost?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial. The witness hasn't been qualified to give any testimony on that subject.

The COURT.—I don't think it is material how much the wharf is going to cost.

Mr. BAYLISS.—I want to advise your Honor as to the extent of these improvements.

The COURT.—Yes, but they are contemplated improvements.

Mr. BAYLISS.—Why certainly.

The COURT.—What difference does it make if it contemplates building a wharf whether it cost \$50,000 or \$10,000?

Q. (By Mr. BAYLISS.) Do you know the reason why this wharf hasn't been driven or built?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. I ask that he answer that yes or no.

A. (By the WITNESS.) Yes.

Q. What is the reason?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

(Testimony of S. H. Ewing.)

A. They were held up on account of the lawsuit with James on that disputed piece of ground down there.

Q. (By Mr. BAYLESS.) If this lawsuit is decided favorably to the company, what will happen? [112—72]

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial and calls for a conclusion of the witness and is speculative.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know how much these buildings will cost on the wharf?

Mr. GUNNISON.—Object to that on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

Mr. BAYLESS.—We offer that map as illustrative of the witness' testimony.

Mr. GUNNISON.—The offer is objected to on the ground that it is incompetent, irrelevant and immaterial, self-serving, and that it doesn't serve any purpose so far as showing irreparable injury is concerned; that it shows more than the contemplated improvements by the plaintiff, and that there is no evidence that it is an accurate map.

The COURT.—That is cross-examination.

Mr. GUNNISON.—A proper subject for objection.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Ewing, when you first came here, what property was turned over—what company property was turned over to you?

(Testimony of S. H. Ewing.)

A. All of the Pacific Coast property.

Q. Was this particular property put in your charge?

A. As well as the balance, yes, sir.

Q. It has been under your supervision since?

A. It has.

Q. This particular piece in dispute?

A. In addition to the rest, yes.

Q. Has the company claimed to own this since you have been here? [113—73] A. They have.

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—The question has been answered.

Mr. GUNNISON.—We move to strike it. The answer came so quickly, we didn't have an opportunity to object.

The COURT.—Motion sustained.

Mr. BAYLESS.—Your Honor denies our right to introduce this as illustrative of our testimony?

The COURT.—What does it illustrate.

Mr. BAYLESS.—Your Honor allowed him to testify.

The COURT.—I allowed him to testify that it was the plan to build a wharf over this entire piece of property as showing irreparable injury. Now as to what he intends to do, what buildings are going to be erected, and how much those buildings will cost, is immaterial; consequently, that map doesn't illustrate anything.

Mr. BAYLESS.—Your Honor will allow me an exception?

(Testimony of S. H. Ewing.)

The COURT.—Yes, sir.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Ewing, did I understand you to say that this dock must be 600 feet on the face in order to be constructed? A. I didn't say it must be.

Q. Do you mean to say, and do you wish the Court to understand that the company would be irreparably damaged if the dock was 113 feet shorter on its face?

A. They would, yes, sir.

Q. How? [114—74]

A. Because they wouldn't have space enough according to their plans to have two boats land at the same time.

Q. That depends altogether on the length of the boats? A. Yes, sir.

Q. What is the length of the "Spokane"?

A. The "Spokane" is two hundred and ninety odd feet.

Q. What is the length of the "City of Seattle"?

A. About 250 feet.

Q. What is the length—is the "Meteor" a Pacific Coast boat? A. Yes, sir.

Q. What is the length of the "Meteor"?

A. The "Meteor" is about 300 feet.

Q. You say they would be irreparably damaged because they wouldn't be able to lay two boats across the face of the dock at once; is that what you said?

A. I did, yes, sir.

Q. And that, of course, depends upon the length of the vessels? A. Most assuredly.

(Testimony of S. H. Ewing.)

Q. Did you ever see two boats land side by side across the face of the dock? A. Yes, sir.

Q. So that it would be possible to moor two boats at the dock even if it wasn't long enough to take the whole of the two boats across the face?

A. She couldn't work the cargo of the outer one when laying like that.

Q. You have seen them unload, haven't you, that way?

A. A few boxes, but not 200 tons of cargo.

Q. How many times a year does the Pacific Coast Company have two boats here at the same time.

A. Some years they have more and some less.
[115—75]

Q. When was the last time there have been two boats of the Pacific Coast Co. here at once?

A. About twelve days ago.

Q. When was the last time before that?

A. About a week before that.

Q. And before that?

A. Do you mean exclusively Pacific Coast steamers or other vessels at that dock?

Q. I am talking about the Pacific Coast—this is the Pacific Coast Co. dock you are speaking about?

A. Yes, sir. It is a public dock for any steamers—not exclusively Pacific Coast steamers.

Q. I asked you how long before that?

A. I don't exactly recall before that, but it happens every once in a while.

Q. Occasionally?

A. Not exclusively Pacific Coast Co., but other

(Testimony of S. H. Ewing.)

steamers are wharfed there.

Q. There is another wharf in town?

A. There is one other public wharf, yes.

Q. If that wharf should be constructed, it wouldn't be the only wharf in town? A. No, sir.

Q. That is, if the wharves now in existence would remain public wharves?

A. No, it wouldn't be.

Q. The Pacific Coast Co. charges wharfage for boats landing at their dock?

A. No, sir; they charge dockage.

Q. I mean dockage, yes, sir. You mean that the Pacific Coast Co. would be irreparably damaged if they had to hold another [116—76] boat of another line here?

A. As far as that wharf business is concerned, yes, sir.

Q. You also mean to say that a dock 113 feet short of the 600 feet, that would be 487 feet; you don't mean to say they couldn't lay two boats alongside that wharf even if they were each 300 feet long, do you? A. I don't quite get you on that.

Q. I say if the wharf were built at 487 feet instead of 600, you don't mean to say that they couldn't lay two vessels along the face of that dock even if one or both of them were 300 feet in length?

A. They could lay them there, but if they had freight in both ends they would be delayed.

Q. If a vessel was 300 feet long, it would only take up 300 feet of dock?

A. That is one vessel, yes, sir.

(Testimony of S. H. Ewing.)

Q. The next one would take up how much?

A. What if she had freight in one hatch and also in the other hatch; what if the 300-foot steamer had more freight than the other and was laying—

Mr. BAYLESS.—We object to this as argumentative.

The COURT.—Yes, I think so. I don't see the relevancy—I don't see what you are driving at.

Mr. GUNNISON.—I am driving at this, your Honor. Mr. Ewing has said that the Pacific Coast Co. would be damaged irreparably because they couldn't put two vessels along the face of that wharf at the same time and I assume that is the only irreparable damage which the Pacific Coast Co would suffer. Now, I think it would be competent and it was my purpose to show by this cross-examination that you could [117—77] lay two vessels along the face of the wharf.

The COURT.—If the Pacific Coast Co. is entitled to this property and want to build a wharf 600 feet in length, what difference does it make whether the company uses it for one or two vessels?

Mr. GUNNISON.—I guess that is right.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did the company consider building a wharf with a front of any less than 600 feet?

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial.

The COURT.—You have already brought out of this witness that they intended to build a wharf 600

(Testimony of S. H. Ewing.)

feet long. Now, you are asking him about building a wharf less than 600 feet.

Mr. GUNNISON.—May I ask another question?

The COURT.—Just a moment—Have you any other questions?

Mr. BAYLESS.—No, sir.

The COURT.—Very well, what is the question?

Recross-examination.

Q. (By Mr. GUNNISON.) If the defendant in this case should be successful ultimately in his contention that he is the owner of this property, would the Pacific Coast Co. not build a wharf there?
[118—78]

The COURT.—Just a minute. That is the question— Now, do you object to that question? If you do, please state your objection, Do you object to the question?

Mr. BAYLESS.—I do.

The COURT.—On what ground?

Mr. BAYLESS.—For the reason that it is irrelevant, incompetent and immaterial.

The COURT.—The objection is sustained on the ground that it is not proper cross-examination.

Mr. GUNNISON.—Exception.

Q. (By Mr. GUNNISON.) Is that the only irreparable damage the Pacific Coast Co. would suffer?

A. What was that?

Q. That they couldn't lay two vessels along the face of the dock?

A. Well, it would interfere with the wharfage business.

(Testimony of S. H. Ewing.)

Mr. GUNNISON.—That is all.

(Witness excused.)

Mr. BAYLESS.—That is our case in chief.

The COURT.—Proceed with the defendant's case.

Mr. GUNNISON.—There were some deeds offered this morning, I believe, exhibits 1 to 18, inclusive. We move to strike exhibits 1 to 18, which were deeds and other instruments, location notices, etc., which were offered under the statement of counsel that he would connect them with the case and with the plaintiff's contention or ownership. They were admitted as I understand—I am uncertain at this time on account of my not having been present in court, having been on the steamer—and if I seem to be a little bit foggy, I hope your Honor will pardon me—but I understand these instruments and deeds were offered subject to a motion to strike in the [119—79] event the plaintiff failed to connect them with the case in such a way as to make them relevant, and since I have arrived—since I have been in the courtroom, there has been no offer with reference to any deeds and no proof as to the ownership of any property, and my partner states to me that as he understands the evidence, there is no evidence connecting these deeds, these instruments, and we move to strike them; that they are incompetent, irrelevant and immaterial.

The COURT.—The motion is denied as to every exhibit except exhibit four, which contains the records of the Harris Mining District. As to that exhibit, I would like to hear from counsel for the plain-

tiff as to how he has connected it up. Exhibit 4 was the minutes of the Harris Mining District, pages 15 to 22 inclusive.

Mr. BAYLESS.—If the Court please, I merely offered that in evidence to show that at a meeting of the miners and citizens, that on that date the name of the town was officially changed from Rockwell, or Harrisburg, to Juneau, for the purpose of keeping our records clear. First, in 1881, the town was known as Rockwell, then it was known as Harrisburg, and at this meeting of the miners on December 12, 1881, a vote was taken and the name of the town changed to Juneau, and it has been known as that ever since.

The COURT.—Suppose it hadn't been changed to Juneau, what has that got to do with this case?

Mr. BAYLESS.—I simply wanted to keep our records clear. I don't want to hold out on it; if your Honor doesn't think it is material, why it may be stricken.

The COURT.—Exhibit four will be stricken.

Mr. BAYLESS.—I would like to have the right to examine this exhibit more closely and present it in the morning, if I may. [120—80]

The COURT.—If you can show that it is connected with the case, it will be admitted.

Mr. GUNNISON.—If your Honor please, I desire to make a motion for a nonsuit and I would ask your permission to make that in the morning.

The COURT.—I am going to have a night session.

Mr. GUNNISON.—To-night?

The COURT.—Yes, sir.

Mr. GUNNISON.—Well, your Honor, of course I realize that this case was set for the 17th of July—at the time there was another term of court in session, and I then stated to your Honor that I desired to go to Seattle. I was unable to go to Seattle because of the long extent of that term of court and I returned here and your Honor told me at that time that it was set and that if I was not back—that if I would come back as quickly as I could—your Honor would continue the case until the 20th. I was called to Ketchikan on an important business engagement and was unable to make the Seattle trip and I have only just returned. Your Honor must realize that I haven't had any chance to talk with the witnesses. It is true my partner has been here, but this is a case I have had charge of since the inception of the case and I request your Honor to give me till to-morrow morning.

The COURT.—I stated to you, Judge Gunnison, in Skagway, that if you did not get back from Seattle—I understood you were going to Seattle, and I told you if you did not get back by the 17th, I would not force the trial of this case until the 20th. Now, I have two other cases set for the 20th and I don't want one case to run into another if it can possibly be prevented. [121—81]

Mr. GUNNISON.—I am not asking it to go over to the 20th, but to-morrow morning.

The COURT.—I know, but to-morrow morning—we lose all this time. To-morrow is Saturday and

Saturday is a half-holiday, and Monday is the 20th.

Mr. BAYLESS.—If the Court please, may I say a word?

The COURT.—Well, it is not necessary, because I am not going to have a night session.

Mr. BAYLESS.—Will your Honor work to-morrow afternoon?

Mr. GUNNISON.—I am perfectly willing.

The COURT.—Of course, it is a half-holiday and we received instructions from the Department regarding it, but I suppose anything can be done by consent if the Deputy Clerk is willing to work.

Mr. REED (Deputy Clerk).—Yes, sir, I am willing.

The COURT.—All right.

Mr. BAYLESS.—Would it be possible to run to six o'clock to-night?

Mr. GUNNISON.—We are not ready.

The COURT.—Do you want an adjournment?

Mr. GUNNISON.—Of course, I didn't ask for a night session.

The COURT.—Well, we will call it half past nine o'clock to-morrow morning. Try to finish this to-morrow.

Mr. GUNNISON.—I am afraid we won't be able to finish to-morrow.

The COURT.—Very well; we will do the best we can. There may be a night session to-morrow night.

(Whereupon court adjourned until 9:30 A. M., July 18, 1914, when court reconvened pursuant to adjournment.) [122—82]

Mr. BAYLESS.—If the Court please, I have filed my reply this morning and served a copy on Judge Gunnison.

Mr. GUNNISON.—I have had—the reply was served on me last evening about half-past five. Our stenographer had gone and I was not able to get to it until this morning and we have prepared a motion to strike the reply and have a demurrer here to the reply itself.

The COURT.—Well, I don't see anything in the reply, Judge Gunnison, except a denial of each and every allegation, contained in the fifth paragraph, and the rest of the reply are admissions.

Mr. BAYLESS.—And denials, if the Court please.

Mr. GUNNISON.—I call your Honor's attention to the prayer and that there is no allegation of ownership in the reply.

The COURT.—There doesn't have to be, that I know of.

Mr. GUNNISON.—The reply is an answer to an affirmative defense.

The COURT.—That is very true, but he alleges in the complaint that it is the owner; now, he doesn't have to re-allege it in the reply.

Mr. GUNNISON.—I assumed that a reply to an affirmative defense had to be a complete answer. It admits that it has cut off its right to the upland and now relies solely—the reply relies solely upon the possession of the tide lands and not on any right of ingress or of egress and your Honor, I think, will bear in mind that the right of ingress and egress isn't

right to build on the tide land, but is right to pass to and fro over it, and there isn't any allegation here or in this reply that we have interrupted his right to pass to and fro over it. He now says that it is true—he has [123—83] admitted that they sold the upland and that they have sold off a street from the westerly end of it, and the only thing he denies is the allegation in the answer that he has cut off his littoral and riparian rights so far as this is concerned.

The COURT.—If the plaintiff in his reply simply admits some of the allegations of an affirmative defense—if he moves out of court, you should make a motion for judgment. So far as the prayer of the answer is concerned, of course he cannot get any relief that is not consistent with the relief asked for in his complaint. The motion to strike will be overruled.

Mr. GUNNISON.—Well, the demurrer is based on that.

The COURT.—Well, the demurrer will be overruled.

Mr. GUNNISON.—We would like to file a motion during the day for judgment on the pleadings. I didn't have time to do it this morning. Now, before making our motion for nonsuit, we desire to make a formal motion with reference to the deposition of Captain Lloyd. We move to strike the answer to direct interrogatory 13 on the ground that that interrogatory and the allegations with reference to the necessity for taking out head and stern lines ashore and making fast to the piles is based upon the theory

in the deposition of Captain Lloyd that that wharf was—the wharf about which he is talking extends 250 feet from the shore line into deep water. We move to strike from the answer to direct interrogatory 14 the portion down to the words “1896” in line 281½, on the same grounds and to strike the next sentence “And they were so used by other ships for the same purpose,” on the ground that no foundation was laid for any such testimony; and the balance of that answer we move to strike on the grounds stated in our first motion, that it is based on the hypothesis—or on a statement [124—84] of facts that isn’t shown in this case. There is no evidence except the statement of Captain Lloyd that that wharf was 250 feet; in fact, all of the evidence is to the contrary—that it was only 80 feet long. And we also move to strike the answer to interrogatory 22 on the same grounds, based on the hypothesis that that wharf was 250 feet long.

The COURT.—The motion will be denied.

Mr. GUNNISON.—Exception. Now, if your Honor please, we move that this action be dismissed and the plaintiff in this case be nonsuited, on the ground, first, that they have failed to prove their allegations as to the incorporation of the company and, consequently, its right to sue as a company; second, they have failed to prove, as required by Chapter 11 of the Acts of the Legislature of the Territory of Alaska, that they have paid their annual tax for the present year—the last annual corporation tax; third, that they have failed to prove the location—a location of the ground which covers the ground in contro-

versy; fourth, that they have failed to prove that they were in possession of this ground in controversy on the 17th day of May, 1882—

Mr. ROBERTSON.—1884.

Mr. GUNNISON.—1884, or at any other time, or that they used or occupied it, or that they claimed this ground in question. They have failed to prove possession of the ground and they have failed to prove occupancy of the ground either before 1884 or since that time. They have failed to prove their allegation that the ground in controversy was improved, and they have failed to prove that we have interfered—that the defendant in the case has interfered with the access of this company, or this plaintiff, to deep water from its upland. Your Honor—well, I will not discuss it until I get to it— [125—85] their allegations being that they were in possession of blocks O, P, Q, R, S and T, and the proof being that they were in possession of the waterfront, of tide lands, extending northerly or northwesterly from the land in question for more than 450 feet. They have failed to prove any irreparable damage or that the acts of the defendant, or the possession of the defendant, of the ground by this defendant James will render the land valueless—render the waterfront or the upland of the plaintiff company valueless. The plaintiff has admitted that it has cut itself off in the pleadings; it has admitted that it has cut itself off from the upland, and that it has no littoral rights; and that there not only is no proof of ownership of the upland, but that it is admitted that they have disposed of the title to the upland.

Mr. BAYLESS.—Where is that admission, Judge Gunnison?

Mr. GUNNISON.—In your reply, sir. And that they have also admitted that they have dedicated the streets along the waterfront to the city and that the streets have been accepted by the city. Now, if your Honor please, I realize that the first two grounds on which our motion for a nonsuit is made are highly technical and are susceptible to proof and they have been omitted through oversight of counsel, but when we come to the actual proof on these various subjects, I think your Honor will see that our contention is well founded. In the first place, the evidence in this case as it stands at the present time is that some time in 1881, according to the description in a location notice, the plaintiff's predecessors in interest located a claim for a wharf site. They located 600 feet, placed a center stake, and measured 300 feet each way from it. In the complaint, they allege that their marks [126—86] began at a stake and mound of stones an eighth of a mile easterly from the town, ran north 600 feet, thence east 600 feet, and then ran to a stake or stone at low-water mark, and then ran along the water line to the place of beginning; that the land located by Murray was improved, and that Murray entered into possession of it and had been in the actual, notorious, continuous and adverse possession, under color and claim of title for more than seven years. Now, the evidence here shows,—in the first place, there is no evidence here to show any markings on the ground before 1884. The wharfinger, Mr. Webster, testifies that in 1887

he put in the two piles on each end. The witness Mr. Wells testified that there were some piles out there somewheres that they tied a ship to. The testimony of the two captains was that the ships were tied up in bad weather—moored in bad weather by head and stern lines ashore. Captain Hunter, if I remember correctly, didn't testify that they were tied up to piles. My recollection of his testimony was that the lines were taken ashore and fastened above high tide. The testimony of Captain Lloyd is that they were taken ashore and fastened on piles, but the question as to the marking and the occupancy of that land has only that testimony to bear on. There is also the testimony of Captain Hunter that sometimes when they had a load of cattle they would open the ports, let the cattle out and they would swim ashore. Now, we contend that that is not evidence of either possession or occupancy of the land. The testimony of the wharfinger Webster is, that so long as he was there, he never remembers of the lines of the vessels being moored in that way, and even Mr. Wells, with all his decision and his certainty of testimony, doesn't [127—87] say that that was done every time. He doesn't say it was the practice. He said that in bad weather they sometimes moored that way. And there is no evidence here in this case that in May, 1884,—on the 17th of May, or within any appreciable time prior to that, that the land in controversy was either in the possession, or in the occupancy, or occupied by the predecessors in interest of this plaintiff, and I submit, your Honor, that if the plaintiff in this action is relying upon the Act of

1884, it is incumbent upon them to bring themselves within the terms of that Act. The language of the Code, as I recollect it, is that persons in the actual possession and occupancy of the ground, or claiming the ground, shall not be disturbed in their possession until future legislation. Now, let us see—what evidence shows with reference to the occupancy or claim of ownership of that ground prior to 1884? I believe there is in evidence here a location notice in the language of the complaint. Now, aside from that, there is no evidence of any claim of ownership—no open or adverse ownership at that time. Mr. Webster says there was no occupation in that they never used that ground, weren't in the occupancy of it, and there isn't any evidence of possession of it, and that in 1887 he put in the two piles to mark the corners. Now, we submit that under this statute, in order that that might be efficacious—that any marking might be efficacious—it must have been on the 17th day of May—

The COURT.—Now, Judge Gunnison, suppose those piles were not put in until 1887—there were seven years from 1887 to 1894. Your man didn't go there until 1906. Now, where is the question as to whether that is sufficient?

Mr. GUNNISON.—We claim 1900. [128—88]

The COURT.—It was seven years from 1887. Now, where is the question of the sufficiency of their testimony, that is, the weight of it—how can you contend that there is no testimony? Of course, I have got to take all the testimony and weigh it and see it the same as a jury, but how can you contend that

there is no testimony of any occupancy?

Mr. GUNNISON.—I contend that there is no testimony of any occupation of that ground—I am unable to point out any testimony of occupation of that ground. That is the testimony and we contend that it doesn't constitute—

The COURT.—On that question, the time to argue that is when the time comes to argue on the merits. It is testimony tending to show whether it does or not—I cannot dismiss the case now—but when it comes to sizing up the testimony and weighing it, it may be another question.

Mr. GUNNISON.—Well, your Honor, here is a case where it is a question whether that is occupancy or not. They have rested. Now, if that isn't occupancy,—why must we be put to trial if it isn't occupancy? It seems to me the time to say about the occupancy is now. Further than that, the evidence conclusively shows that after 1884, perhaps 1885, the land in question here was absolutely abandoned, that it was never used for any purpose whatever. There isn't any evidence here of any use of that land after 1886. That is the very latest—

The COURT.—1886?

Mr. GUNNISON.—1896, I mean, your Honor. The last time that was used—and I call your attention to the fact that that was a wharf site—and that as a wharf site—the whole 600 feet as a wharf site was never used after 1896. This was taken up as a site for a wharf, and hasn't been used [129—89] as a wharf since that time. There isn't any evidence of any possession of it as a wharf site since

then. There isn't any evidence of the use of this particular piece of ground, even taking their testimony at the very strongest that it could be taken, that after 1894 the ground in controversy was ever used for any purpose whatever. There isn't a scintilla of evidence of its use, even for the purpose of carrying lines across it and mooring a ship, or for the purpose of discharging cattle over this ground, even taking Captain Hunter's statement at the strongest possible construction of it. Now, your Honor held, if I remember correctly, in the case of Clark vs. Sheldon that tide lands could be abandoned, and it seems to me that there isn't any evidence here of any sovereignty or exercise of dominion over this ground in any respect. Further than that, there isn't any evidence of any attempt to exercise the right of ingress or egress to deep water over that ground in controversy. The testimony of the witnesses is that these piles were set at high water—the mark of high water—that they went to the piles in a boat. Even taking the testimony of Captain Hunter and Captain Lloyd that the lines were taken ashore in a boat, and I think even Mr. Wells testified too that they were taken to the piles in a boat at high water—now that isn't ingress or egress.

The COURT.—I understand that position has been abandoned by the plaintiff in his reply.

Mr. GUNNISON.—Well, if your Honor holds that, of course that disposes—

The COURT.—That is my understanding of it from reading the reply.

Mr. BAYLESS.—Which position? [130—90]

The COURT.—Egress and ingress from the upland.

Mr. BAYLESS.—No, your Honor, we have not.

The COURT.—Very well, proceed with the argument.

Mr. BAYLESS.—If your Honor will call my attention to the place, I will change it.

The COURT.—I will give you every opportunity that anybody could have.

Mr. GUNNISON.—Now, returning to the question of ingress and egress, there is no evidence here of the present ownership of the upland behind this tract. On the contrary, there are admissions—that is, I mean there is no direct evidence that the Pacific Coast Co. owns the upland behind these blocks—Block T. and 13 feet of Block S. On the contrary, the plaintiff admits in its reply the sales of tracts of land; it also admits the sales to the city on the west-erly end of R, S and T, which are the ends of the lots which abut upon the tide lands. There is no evidence of any attempt to use this piece of ground in controversy and we shouldn't confuse this piece of ground with the balance of it. There is no evidence of any attempt on the part of the plaintiff or its grantors ever to use these 113 feet for the purpose of access to the upland or from the upland to the water, not a scintilla of evidence. On the contrary, if your Honor will take that map that was introduced yesterday showing the "Topeka," I think, or take the testimony of any witness as to the length of one of those vessels extending over the face of the wharf, this

old Carroll and Murray wharf, it will be obvious that even these vessels when they were working the forward or after hatch—and I think Captain Lloyd said they always made a port landing so that the vessel would stand farther to the south—[131—91] and an examination of that plat will show that the bow of the vessel never extended over the face nor across the front of this land in controversy, and it is reasonable to suppose that even when Captain Hunter—when cattle were discharged from the vessel, as Captain Hunter states, that those cattle sought the shore by the quickest place, and it is a matter of common knowledge that the forward ports of a vessel are some distance aft of the bow, and the cattle, when dropped off there, wouldn't have gone across this land. So the question of use of this land for the purpose of access to the upland from the sea isn't covered—there isn't a scintilla of evidence.

The COURT.—Now, Judge Gunnison, so far as the question of ingress and egress is concerned, I would rather hear from the other side.

Mr. GUNNISON.—There is one other thing I would like to speak of. There is no evidence—I think the evidence already spoken of—of any attempt to improve this particular ground in controversy. There is no evidence here of irreparable damage to the plaintiff. Now, it is true that Mr. Ewing yesterday testified that the company would be irreparably damaged because it couldn't lay two vessels at the face of the wharf, but we submit that that is not irreparable damage and we think that there is no evidence of irreparable damage here.

Mr. BAYLESS.—If the Court please, it was an oversight on my part in not offering in evidence a certified copy of the articles of incorporation of the Pacific Coast Co. I overlooked that denial in the answer and I would ask the privilege of being allowed to introduce a certified copy and also [132—92] of proving that the company has paid its corporation tax for the year 1913.

The COURT.—Do you allege that in the complaint?

Mr. BAYLESS.—No, we just said that the Pacific Coast Co. is a corporation, duly organized and existing. We didn't allege it at all, but they didn't move against that, as I remember—they just denied it in the answer.

Mr. GUNNISON.—Our position is that the statute requires that they must prove that; that they may neither commence or maintain an action unless they allege that and prove it.

Mr. BAYLESS.—I believe it has been held—I think your Honor sustained a demurrer to a complaint that did not allege that.

Mr. GUNNISON.—Our contention is that it may not be maintained now without proving it.

The COURT.—This action was commenced when?

Mr. BAYLESS.—This action was commenced prior to the passage of that Act.

The COURT.—I will allow the plaintiff to reopen his case for the purpose of proving the incorporation of the company and for the purpose of proving that they paid their tax.

Mr. BAYLESS.—I would offer in evidence a cer-

tified copy of the articles of incorporation of the Pacific Coast Co.—certified to in 1898.

(Admitted in evidence and marked: “Plaintiff’s Ex. #21.”)

Mr. GUNNISON.—Of course we except to the re-opening of the case.

The COURT.—Now, Mr. Bayless, I don’t want to mix things up. I thought that was the only thing you were going to offer. I will give you leave to re-open your case to that extent. Now, go ahead and make your address in regard to the motion. We can attend to this later on. [133—93]

Mr. BAYLESS.—It is considered that I have the privilege of proving that the company paid the 1913 tax. If the Court please, taking up the matters of admission, I believe it is your Honor’s ruling that we have admitted ourselves out of court.

The COURT.—I did not say you had admitted yourselves out of court. It was my understanding that you had abandoned that situation.

Mr. BAYLESS.—I call your attention to the paragraph which refers to it—Paragraph 5 of the defendant’s affirmative answer is as follows:

“Upon information and belief, that prior to the commencement of this action, this plaintiff attempted to and did part with, and did sell and convey to other persons, not parties to this action any and all right, title and interest in the tide lands and other lands described in said complaint and herein described, of which said plaintiff, in said complaint, alleges itself to be the owner, and that plaintiff is not now and was not

at the time of the commencement of this action, the real party in interest, it having theretofore parted with and divested itself of whatever right or claim of right to, or interest in, the said property it may, at any time, have pretended or claimed to have had therein.”

The reply, paragraph 3, is as follows:

“Referring to paragraph V of said affirmative defense set out in said answer, plaintiff denies each and every allegation therein contained.”

I should think that that answers Judge Gunnison’s statement that we did not claim the uplands. Now, with reference to the allegation that we had divested ourselves from all the littoral rights, paragraph 4 of the answer is as follows: [134—94]

“That prior to the commencement of this action, plaintiff, by various certain formal conveyances, deeded to the town of Juneau, and dedicated to said town and the public as a public street, road, or highway, a strip off the westerly portion of Blocks R, S and T, abutting upon the line of mesne high tide and further, dedicated other portions of said lots and blocks as public streets, roads and alleys; that said conveyances and dedications have been accepted by said town; that by said acts, the said plaintiff cut off, abandoned and parted with, and divested itself of any and all littoral and riparian rights, if any it ever had, and any right or privilege of access to or from deep water from the said upland across the tide lands herein described, and

thereby estopped itself from claiming any such right, title or interest in or to or right of access across, said herein described tide lands.”

Paragraph 2 of the reply is as follows:

“Referring to paragraph IV of said affirmative defense set out in said answer, the plaintiff admits that it deeded to the City of Juneau a certain strip of ground from the westerly portion of Blocks R, S and T, and further admits that it conveyed certain portions of said lots and blocks as public streets, roads and alleys; that said dedications have been accepted by the town, but denies each and every other allegation of fact contained in said paragraph.”

I believe it is a matter of law whether or not in making such dedication it has cut off its riparian rights, and the decision in the McCloskey case is of some weight. I didn't intend to say that we had cut off any littoral or riparian rights. As a matter of fact, we have dedicated a piece of land to the [135—95] city for a street, but the deeds merely grant the city an easement as a public street. It wasn't a deed to the absolute fee, because the deeds contain a reversionary clause to the effect that if the city should discontinue the use of it as a street, then it would revert to the company.

The COURT.—What evidence have you offered that this cuts off your access?

Mr. BAYLESS.—I haven't offered any evidence, if the Court please, that this has cut off our access.

The COURT.—Then how do you maintain this action on that ground?

Mr. BAYLESS.—I don't quite understand.

The COURT.—What evidence have you offered that the structure of Mr. James' cuts off your access—ingress and egress to the upland?

Mr. BAYLESS.—I haven't offered any evidence as to that fact, if the Court please.

The COURT.—How can you make it then the basis of a recovery?

Mr. BAYLESS.—Well, I beg your Honor's pardon—Mr. Ewing testified that the gridiron was in the way of their building any wharf and that certainly prevented the company from using the tide lands, inferentially of its right of ingress and egress to the uplands. Mr. Wells said that if they should land steamers down there where the old Carroll wharf was, by means of a head line to the pile where it used to be, that this gridiron would interfere with it.

The COURT.—You are not landing vessels down there in any way such as that.

Mr. BAYLESS.—I understand that, but those two witnesses have testified that the occupation by Mr. James certainly [136—96] interferes with the actual ingress and egress and that is a matter which your Honor should infer anyhow from the position of the defendant himself. The mere fact that he is down there certainly prevents the ingress or egress by the plaintiff, and I will say this, that the main part of my case is in rebuttal, and I only put on the witnesses who testified as to the company's occupation and possession in the early days, prior to the Act of 1884 and during the time the wharf was used.

Then it is up to James to prove that we abandoned the ground that he has been in possession of as he pleads in his affirmative defense from 1900 down to date. After he presents proof to that, we must disprove that. That is the reason I didn't put Mr. Swan on or interrogate Mr. Ewing further. The testimony shows, by Mr. Wells, that the land was appropriated in 1881 by Murray; that a wharf was built in 1881 and completed in 1882, and that between 1882 and May 17, 1884, that these piles stood on the corners of the property and that a pile in particular stood where the gridiron is now, and that the company was in possession, as Mr. Wells said, by reason of using this pile for the mooring of ocean-going vessels which landed at the Carroll wharf at all times from the date the wharf was completed and the piles put in—I think in the summer of 1883—from that time to the passage of the Act of May 17, 1884, and he also said that situation continued down as long as they used the wharf. I call your attention to Mr. Webster's testimony; you will particularly remember that he said he had no knowledge of the situation on the ground prior to 1885, at least the latter part of 1884 or 1885; that he had no knowledge of the conditions prior to the Act of 1884. He has not contradicted Mr. Wells in that [137—97] respect. It is true he testifies that piles were set there on the corners in 1887 and that, as far as he knew, no vessels were tied up to these piles at all, but as I recollect his testimony, it was *not* the effect that no vessels ever tied there.

The COURT.—I think the motion should be de-

(Testimony of S. H. Ewing.)

nied, for the simple reason that the whole matter can be passed upon when the Court decides the case. If counsel for the defendant thinks there isn't any evidence, let him refuse to put in any evidence. If he thinks there is nothing to answer, why don't answer anything.

Mr. GUNNISON.—Will you give us ten minutes, please, to talk the matter over?

(Whereupon court took a recess for 10 minutes.)

The COURT.—Before you decide what to do, I promised Mr. Bayless to allow him to prove those particular things, that is, the incorporation of the company and the payment of the license tax. You may proceed.

S. H. EWING, being recalled on behalf of the plaintiff, by permission of the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Ewing, I will ask you if the Pacific Coast Company has paid its Territorial License Tax for the year 1913? A. It has.

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial, not the best proof. The statute provides that the records shall be produced [138—98]

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) When did it pay it?

A. Second of January of the present year.

Mr. BAYLESS.—That is all.

(Witness excused.)

The COURT.—The articles of incorporation

weren't introduced, were they?

Mr. BAYLESS.—They were introduced, as I recall.

Mr. GUNNISON.—If it please your Honor, the defendant is in this situation: We have an affirmative defense, and in that affirmative defense we ask for injunctive relief against the plaintiff, and while we don't recede from our position that there is no evidence of their ownership or our position that they have failed to prove their case, we desire to proceed with our affirmative allegations for the purpose of obtaining a permanent injunction against them.

The COURT.—Proceed.

Mr. BAYLESS.—Just a minute, if the Court please. Mr. Swan is a witness for the plaintiff in rebuttal. Mr. Swan has business engagements in Seattle that will necessitate his leaving to-night on the "Alameda" and I had been in hopes that the defendant would get its case in in time for Mr. Swan to give his testimony before that time. I would ask permission to put him on the stand later in the day—to have Mr. Swan's testimony taken in an irregular way.

The COURT.—If Mr. Swan is a witness in rebuttal, of course you can't tell what you want to rebut until you [139—99] hear the testimony of the defendant; consequently, I cannot look ahead and say just what time you may put Mr. Swan on the stand, because you do not know yourself. You don't know what you want to rebut.

Mr. BAYLESS.—It is a hard position for us to be in. What I ask is that sometime later in the day,

if the defendant cannot get its case in, that Mr. Swan's testimony be taken in the same manner as a deposition in open court.

The COURT.—Well, we will get at that when the times arrives. When you see you want Mr. Swan as a witness, then is the time to ask the Court to put him on out of order, but I cannot pass on that before that time.

Mr. GUNNISON.—If they want to do it now, they may.

The COURT.—He can't do it now, because there is nothing to rebut. [140—100]

[Testimony of Charles Biernoth, for Defendant.]

CHARLES BIERNOTH, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name, please, Mr. Biernoth?? A. Charles Biernoth.

Q. How old are you? A. Fifty-four years.

Q. What is your occupation? A. Miner.

Q. Where do you live?

A. I live on Fourth Street here in Juneau.

Q. How long have you lived in Juneau?

A. Since 1899.

Q. Do you know George E. James? A. I do.

Q. When did you first know George E. James?

A. In 1892, in the State of Washington.

Q. Do you know him in Juneau?

A. Yes, sir; ever since I am here.

Q. Do you know the place on the waterfront here

(Testimony of Charles Biernoth.)

where the James gridiron is? A. I do.

Q. When was the first time you saw that, Mr. Biernoth—that place, not the gridiron?

A. That place? It was in 1900.

Q. Now, what were you doing in 1900 when you first saw that?

A. I had been working for James in the sawmill at Sheep Creek. [141—101]

Q. Mr. James had a sawmill at Sheep Creek?

A. Yes.

Q. And you were employed by him? A. Yes.

Q. What did you do with reference to this ground in controversy in 1900, this piece of ground?

A. We put in some rafts of lumber from Sheep Creek.

Q. When was the first time you came there, what time in the year?

A. I should say it was in September or October, something like that.

Q. 1900? A. In the fall of the year.

Q. I mean this ground when you came up with the rafts—what year? A. The fall of 1900.

Q. What was the condition of that beach there when you arrived?

A. It was a beach—lots of boulders there.

Q. And was it then in the possession of any one?

Mr. GUNNISON.—Object to that as calling for a conclusion.

The COURT.—Objection sustained.

Q. (By Mr. GUNNISON.) Was anyone on that beach when you were there? A. No.

(Testimony of Charles Biernoth.)

Q. Were there any buildings on it? A. No.

Q. Do you know where the old Murray and Carroll wharf was? A. I do.

Q. Was that used as a wharf at that time?

A. No.

Q. Where were vessels landing here in Juneau?

A. Over here on the Pacific Coast and Alaska Steamship Companies' wharves at that time.

[142—102]

Q. That was not used as a public wharf in 1900?

A. No.

Mr. BAYLESS.—Object to that as calling for a conclusion.

The COURT.—If he knows, he may answer.

Q. (By Mr. GUNNISON.) You say there was no structure on the tide lands when you arrived?

A. There wasn't.

Q. And that it was covered with boulders?

Mr. BAYLESS.—Object to that as leading.

Mr. GUNNISON.—Well, I think he has already testified to that. I do not want to attempt to lead him.

Q. Now, what did you do, if anything, with reference to that piece of tide land?

A. Oh, we had to clear some of them rocks off.

The COURT.—Just a moment. What do you mean by "this piece of tide land?"

Mr. GUNNISON.—I mean this piece in controversy.

The COURT.—That is, where Mr. James had his gridiron?

(Testimony of Charles Biernoth.)

Mr. GUNNISON.—Yes, sir.

A. (By the WITNESS.) I couldn't exactly state that it was exactly that piece of ground where that gridiron was.

Q. (By Mr. GUNNISON.) Describe where it was.

A. It was between that wharf and Chief Johnson's house.

Q. Where does Chief Johnson's house stand with reference to the present Young dock?

A. Almost on the other side.

Q. Almost behind it on the upland? A. Yes.

Q. And it was between the Murray and Carroll wharf and the Chief Johnson house?

A. It was. [143—103]

Q. What did you do with that piece of beach between that ground and the Chief Johnson house?

Mr. BAYLESS.—Object to that question as too indefinite and that it has nothing to do with the property in this case.

The COURT.—I think it ought to be confined to what is in dispute.

Mr. BAYLESS.—As I recollect, he hasn't testified that he knows about the property in dispute.

Mr. GUNNISON.—He has testified that he knows where the gridiron is.

Q. Do you know where the James' gridiron is, Mr. Biernoth?

A. Yes, I know where it is at present.

Q. Now, where is that with reference to the Young Dock, the Chief Johnson house, and the old structure

(Testimony of Charles Biernoth.)

known as the Carroll and Murray wharf?

A. About between it. I should say it corners nearer the Young Dock than anywhere.

Q. Now, do you know how much, approximately how much, ground there is covered by that gridiron and its approaches?

A. Oh, I should think about a hundred feet or so, hundred and fifty.

The COURT.—Just a moment. Do you mean 150 feet up and down the beach?

A. (By the WITNESS.) Oh, it comes from both sides. I mean including the whole thing. There is a kind of a half circle going down to it there at the side.

Q. (By Mr. GUNNISON.) You mean 150 feet along the beach?

A. Yes, along the present street there.

Q. About how much land did you clear—well, I will withdraw that— Are you able to say now where you worked on any part of that hundred feet or 150 feet, that is, occupied by the James float? [144—104]

Mr. BAYLESS.—Object to that as being suggestive and calling for a conclusion, and leading.

The COURT.—I don't think it is suggestive or calling for a conclusion. He asks him if he is able to state— Do you know? What did he do? Did you do anything with reference to that?

Mr. GUNNISON.—I will withdraw the question.

Q. Did you do anything with reference to this piece of ground, or any part of it, which lies within

(Testimony of Charles Biernoth.)

the 100 to 150 feet as you have described it, on the waterfront?

A. Landed those rafts and cleared away the boulders. It wouldn't have floated—

Q. Now, you say that when you brought the rafts in there it was full of boulders; what did you do with the boulders? A. Rolled them in the sea.

Q. About how much ground did you clear in there?

A. Over a hundred feet or more.

Q. Two hundred feet or one hundred feet, which did you say?

A. About a hundred or a hundred and fifty, something like that, more or less.

Q. How did you clear it?

A. Just by taking the boulders off.

Q. When you went on there, did anyone say anything about your going on there?

Mr. BAYLESS.—I object to that as irrelevant, incompetent, and immaterial.

The COURT.—The question is, did anybody say anything to him?

Mr. BAYLESS.—It is too general.

The COURT.—It may be. He may answer it yes or no. [145—105]

Q. (By Mr. GUNNISON.) I mean, did any person other than Mr. James say anything to you about your going on the ground, on the beach, or clearing it or taking any action on there? A. No.

Q. How long did it take you to clear that— Who worked with you, by the way?

A. Mr. James himself, sometimes.

(Testimony of Charles Biernoth.)

Q. How long did it take you to clear it?

A. I couldn't say—worked there several times.

Q. More than a day?

A. Yes, it took more than a day, but we never worked steady. Just when we landed a raft and then rolled the rocks away. Sometimes we came in when the tide wasn't in and cleared away the rocks. We cleared more than really was necessary.

Q. Now, how often did you land rafts there during the year 1900, Mr. Biernoth, for Mr. James?

A. I don't know, about three or four times a week.

Q. How late did you work that summer or that fall?

A. I think it was the 15th of October or so, middle of October anyway, sometime.

Q. Then were you employed by Mr. James all of the following spring? A. Yes.

Q. In the following year. Were you on that ground again in 1901?

A. Sometimes I was, not so much.

Q. In 1901 were there any structures on the ground? A. There wasn't.

Q. Any improvements on it?

Q. Just the same as it was before.

Q. Just the same as in 1900. And what did you do for Mr. James there then?

A. I worked in the lumber-yard over in Douglas.

[146—106]

Q. And did you come to this place with lumber for Mr. James?

Mr. BAYLESS.—Object to that as leading.

(Testimony of Charles Biernoth.)

Mr. GUNNISON.—Yes, I will withdraw the question.

Q. Were you on this ground in controversy, or this place you described as having cleared in 1900, in the year 1901?

Mr. BAYLESS.—I object to that as being a repetition.

Mr. GUNNISON.—That is leading, your Honor, but it is preliminary.

The COURT.—Proceed. He has answered that he was there in 1901.

Q. (By Mr. GUNNISON.) What did you do in 1901? How came you to go there in 1901? What brought you there?

A. I never went there, except with lumber.

Q. Whose lumber? A. Mr. James'.

Q. How many times did you go there in 1901?

A. I don't know.

Q. More than once?

A. I couldn't say; maybe once or more.

Q. Were you there in 1902? A. I think I was.

Q. For what purpose were you there? What did you do there?

A. Well, I never went there except I had a raft, generally from Douglas, brought a raft over there and landed it there.

Q. How long did you work for Mr. James, how many years?

A. From 1899 to 1904; worked a while in 1905.

Q. During that time who, if any one, used that waterfront, if you know—to your knowledge?

(Testimony of Charles Biernoth.)

Mr. BAYLESS.—We object to that as calling for a conclusion of the witness and as being incompetent.

The COURT.—How does that call for a conclusion of [147—107] the witness—“Who, if you know, used it?”

Mr. BAYLESS.—It is leading, if the Court please.

The COURT.—How is it leading—“Who, if you know, used it?” Where is the leading part? Objection overruled.

Mr. BAYLESS.—What year was that?

Q. (By Mr. GUNNISON.) Who, if you know, in the year 1902 used this piece of ground?

A. (By the WITNESS.) Nobody.

Q. Who do you mean— Do you mean to say that Mr. James didn't use it either?

A. He used it always for landing, every year since that time.

Q. Did anybody else except him use it?

A. No, not to my knowledge; no, not that I know of.

Q. During the time you were employed by Mr. James and were on this ground, or landing lumber on it, were you ever warned off or told not to go upon the ground? A. I wasn't.

Q. Did you ever see any man or any person in charge of that ground? A. I have not.

Q. How often were you there in 1903 and 1904?

A. I couldn't say.

Q. Do you remember whether or not you were there during that time?

A. No, I couldn't say. They would come mostly

(Testimony of Charles Biernoth.)

in scows then. I had nothing to do with it at that time.

Q. You just had the rafting to do? A. Yes.

Q. Was anything being done with the wharf in 1902, 1903 and 1904, the old Murray-Carroll wharf, that you know of? A. No. [148—108]

Q. Did vessels land there at that time?

A. Not that I know of.

Q. In 1902, 1903, and 1904. Was the Murray and Carroll wharf used as a landing place for vessels in 1900 and 1901, if you know? A. No, I don't know.

Q. Did you ever see any vessels land there?

A. I did not.

Q. You were residing here at that time?

A. I was.

Mr. GUNNISON.—I think that is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Biernoth, where were you living in 1899?

A. At the Circule City Hotel.

Q. Were you working for Mr. James?

A. I was.

Q. When did you start in working for Mr. James?

A. It was, I think, about in July, 1899, or 1900.

Q. And you worked for Mr. James from 1899 until sometime in the year 1904? A. Yes.

Q. Did you live in Juneau during that time or in Douglas?

A. When working for him in Douglas, I lived there, and the rest of the time in Juneau.

Q. How much of the time during those years did

(Testimony of Charles Biernoth.)

you live in Douglas and how much in Juneau?

A. Well, from spring to fall I lived in Douglas and the winter time in Juneau. [149—109]

Q. During the spring and summer you lived in Douglas? A. Yes.

Q. During the winters you lived in Juneau?

A. Yes.

Q. Did you have anything to do with landing any materials on this beach during the winters of these years, 1899 to 1904? A. No.

Q. Do you know anything about the situation on this particular piece of property during the winters of those years? A. I did not.

Q. When you first came there, how much of that beach did you clear on this property?

A. I should say about a hundred or a hundred and fifty feet, something like that.

Q. How many boulders did you clear off that beach? A. I couldn't say.

Q. One or more? A. Several hundred.

Q. How big were those boulders?

A. Some of them took two men to move them.

Q. You cleared the whole hundred or hundred and fifty feet?

A. Yes, we just took the biggest ones out so that the raft wouldn't upset on it.

Q. Did you clear all of the beach from the old Carroll wharf buildings down past Chief Johnson's house? A. I did not.

Q. You didn't? A. No.

Q. Where did you start to clear off the beach with

(Testimony of Charles Biernoth.)

reference to the old wharf building—how far on the other side of the old wharf building? [150—110]

A. Well, it was between there—say about half ways or so.

Q. What was the necessity to clear off—

The COURT.—Just a moment. About half ways between where?

A. The old wharf and the Chief Johnson house.

Q. (By Mr. BAYLESS.) You started to clear there, and you went from that point to Chief Johnson's house?

A. There was a post there where the raft was tied to, and that post may be there to-day.

Q. Did you set that post there? A. I did not.

Q. The post was there when you arrived?

A. Yes.

Q. And was that post on the tide lands just a little this side of Chief Johnson's house? A. Yes.

Q. Down about where the line of Charley Young's wharf piles are now?

A. Well, maybe this side of it.

Q. In that vicinity? A. Yes.

Q. Was that post about five feet from the ground—a pile driven in the ground?

A. About five or six feet above the ground.

Q. And that post was tapered off on the end?

A. Well, it was pretty well used up.

Q. It was an old pile?

A. It might be. Something like eight or ten inches in diameter.

Q. Then you started with that post and came this

(Testimony of Charles Biernoth.)

way, or was that post in the center of the place?

A. Might take it for the center, yes. [151—111]

Q. It was the center. Well, then, you cleared part of the beach where Charley Young's wharf is now, didn't you?

A. No, I think that is too far up.

Q. Are you sure about that? Didn't you clear off some of the beach in front of the Chief Johnson house?

A. No, I did not.

Q. Well, now, what was the necessity of clearing off a hundred or a hundred and fifty feet?

A. To keep the raft from breaking up?

Q. How big was the raft?

A. Well, sometimes twenty or twenty-five thousand feet of lumber in it.

Q. What did you do with this lumber?

A. Built this flume here for the Last Chance Mining Company; it was also used in the tunnel for blocks, etc.

Q. Did you ever measure the portion of the beach that you cleared of boulders or rocks?

A. I did not.

Q. Do you know whether it is a hundred or a hundred and fifty feet, or how big it is?

A. I just guess at it.

Q. Did you land your rafts there in the same spot each time?

A. Yes; there was only one place to tie up to.

Q. And you tied up to this old pile that was there?

A. Yes, post.

Q. You tied your raft up to this old pile, did you?

A. Yes.

(Testimony of Charles Biernoth.)

Q. And then this raft would swing one way or the other? A. The tide would come in there, yes.

Q. So you cleared the beach on both sides of that? [152—112] A. Yes.

Q. Mr. Biernoth, I hand you a map which is Plaintiff's Exhibit No. 19, and ask you if you can identify the position of the gridiron now claimed by Mr. James on that?

A. Well, that wasn't here at all, that Juneau Iron Works. (Witness indicating.)

Q. Well, does that map show Mr. James' gridiron—I will ask you if this structure looks like a gridiron to you?

A. That must be it. Here was the old wharf.

Q. Now, can you tell where this pile was with reference to this gridiron?

A. I should think about in here some place. (Indicating.)

Q. That is, in front of the line between Blocks S. and T.; that is to say, where the approach to the gridiron is now. A. Yes, a little beyond that.

Q. A little this way? A. No, a little this way.

Mr. GUNNISON.—We suggest that he mark it on the plat.

The COURT.—Yes, mark it.

A. That doesn't show anything but the recent structures. This is supposed to be the Chief Johnson house; here would be about the wharf. Say make it about here some place.

The COURT.—Mark the place where you think the raft tied up. Mark that with an "R."

(Testimony of Charles Biernoth.)

Q. (By Mr. BAYLESS.) Now, your raft you say swung either way, did it? A. Yes.

Q. It swung to the right?

A. Yes, to the right.

Q. And down the channel and toward the left up here. (Indicating.) A. Yes. [153—113]

Q. And how much ground did you occupy on both sides of this pile? Just mark about how much ground you occupied.

A. I should say about fifty or sixty feet.

The COURT.—He couldn't mark that unless he knows the scale.

Mr. BAYLESS.—These marks represent fifty feet.

The COURT.—No, not all of them. Some of them are more and some less.

Mr. GUNNISON.—We object to any such testimony by counsel unless he swears to it.

The COURT.—The witness testifies that it swung about fifty or sixty feet on each side. I don't see how you can hand the witness a map drawn to scale—of which he knows nothing—the correctness of which he knows nothing—and ask him to mark on it where it swung to. He is simply locating approximately where the pile was. Now, he says the raft swung between fifty and sixty feet on each side.

Q. (By Mr. BAYLESS.) Mr. Biernoth, did any fishermen and owners of boats lay their boats up there on that beach from time to time?

A. Not to my knowledge.

Mr. GUNNISON.—We object to that question as

(Testimony of Charles Biernoth.)

irrelevant, incompetent, and immaterial, and too indefinite.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) During the time you say you brought over these rafts, did anybody else use that beach? A. Not to my knowledge.

Q. No fish boats ever landed there?

A. No; there wasn't very many boats here at that time anyway.

Q. You say you landed rafts three or four times when, in 1900?

A. The fall of 1900, yes. [154—114]

Q. And you worked from—you started rafting there in September or October, didn't you, in 1900?

A. About September, I should think.

Q. And you quit there on or about the 15th of October, 1900? A. Something like that.

Q. How many times did you bring over rafts in 1900? A. I couldn't say.

Q. Three or four times, or once or twice?

A. Oh, about several dozen or more. Three or four a week.

Q. Several dozen?

A. Yes. Not over, but up; they came from Sheep Creek.

Q. They didn't come from Douglas?

A. No, not in 1900.

Q. You didn't start rafting in September or October? A. Yes.

Q. And you quit on the 15th of October?

A. Yes.

(Testimony of Charles Biernoth.)

Q. And you brought about three rafts up a week?

A. Yes.

Q. And you say in 1903 and 1904 there was very little lumber brought over?

A. On rafts, yes. It was mostly brought over on scows.

Q. How frequently were you on the property in 1903 and 1904? A. Very seldom.

Q. How much? A. Very little.

Q. On this property in dispute?

A. Very little.

Q. How many times? A. I couldn't say.

[155—115]

Q. Once? A. Once or twice or so maybe.

Q. You haven't a clear recollection about it?

A. No.

Q. Have you a very clear recollection of what transpired in the earlier days, from 1900 down to 1902?

A. Well, it all depends on what it was. If it was something I was interested in, I might.

Q. You won't say how many times you brought over rafts? A. No, I don't.

Q. You know you didn't come over during the fall or winter? A. Yes, I am positive.

Q. It was only in the summer?

A. Only in the summer.

Q. And you didn't see any fish boats tied up on that beach? A. I did not.

Q. At any time during those years?

A. I did not. If there was any boats, they were

(Testimony of Charles Biernoth.)

farther this way, this side the iron works.

Q. No one used the beach at all?

A. There wasn't many boats here—the "Prospector" and the "Charley Stewart."

Q. You worked for Mr. James, the defendant in this case, from 1900 to 1904? A. I did.

Q. Are you working for him now?

A. I am not.

Mr. BAYLESS.—That is all. [156—116]

Redirect Examination.

(By Mr. GUNNISON.)

Q. Where did you live in the winter during those years?

A. Circle City Hotel. Mostly up on the bar.

Q. Up north of here? A. Yes.

Q. How much of the time would you be in town in the winter?

A. Sometimes I would be here all winter.

Q. During those years, from 1900 to 1904, those winters?

A. Well, I was mostly here. The winter of 1903-4 I was in California.

Q. In 1901 and 1902 were you in Juneau?

A. I was at the Circle City Hotel, yes, sir.

Q. Now, during that time did you see most of the boats that landed here in town?

A. Most all, yes.

Q. Most of the sea-going vessels? A. Yes, sir.

Q. What do you say as to whether or not any of them used that wharf during that winter?

A. Not to my knowledge.

(Testimony of Charles Biernoth.)

Q. Were you ever down to this place during the winters—those winters? A. Sometimes, yes.

Q. Did you ever see it used by any one in those winters? A. I did not.

Q. You testified that the raft swung—when did you usually take those rafts in there?

A. Usually on high tide. [157—117]

Q. And what was the length or size of the rafts?

A. Sometimes a hundred feet; more or less.

Q. And when you say they swung, how do you mean they swung?

A. Up and down with the current.

Q. One end would go with the tide? A. Yes.

Q. And you tied it at this point which you think is about where you have indicated on this map?

A. Yes.

Q. And you mean that would swing?

A. Up and down the channel.

Q. The free end of it would swing up and down and the head end pretty close to that pile?

A. Yes.

Q. Was there one or two piles there?

A. Only one pile that I recall.

Q. You testified in answer to a question of Mr. Bayless that you saw no boats on the beach; what part of the beach do you mean—that part in controversy? A. I do.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Just one other question. Where did they land

(Testimony of Charles Biernoth.)

these scows? A. I do not know.

Q. You do not know? A. No.

Q. You never came over with the scows?

A. I did not. [158—118]

Q. Did you ever see any of them land on this particular beach in controversy? A. I did not.

Q. And this pile you have testified to might have been a little this side of where you indicated on that map, or might have been a little on the other side?

Mr. GUNNISON.—We object to that method of cross-examining—"It might have been here or there" as argumentative, irrelevant and incompetent.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) How about that, Mr. Biernoth? A. I do not know.

Q. You don't pretend that the position you pointed on that map is the identical place where that pile stood, do you? A. I do not.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Were there any scows brought over in 1900—there weren't any scows in 1900, were there?

A. No, I don't think so.

Q. When did they commence to use scows?

A. Over on the Island?

Q. In 1900, 1901, 1902 or 1903?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Well, when, what years?

A. There was scows used in 1901, 1902 and 1903.

(Testimony of Charles Biernoth.)

Q. 1900? A. No. [159—119]

Q. Were there rafts used in 1901, 1902 and 1903?

A. Once in a while a small raft.

Q. What was it you came over with?

A. Rafts.

Q. Well, whenever a raft came over, you came with it? A. Not always.

Q. How often? A. I couldn't say.

Q. Did you testify—have you testified that you came over in 1901, 1902 and 1903 with lumber?

A. Yes, occasionally I did.

Q. And landed at that place with lumber?

A. Yes.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. You only testified that you came over two or three times in 1901?

A. I do not know how often I came over, but I do not know how often.

Q. You do not know how often you came over in 1902, 1903 or 1904? A. No.

Q. And you do not know where those rafts landed when they came over? A. No.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Which rafts do you mean?

A. When I wasn't with them.

(Witness excused.) [160—120]

[Testimony of Frank Roberts, for Defendant.]

FRANK ROBERTS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name, please?

A. Frank Roberts.

Q. Your residence? A. Juneau, Alaska.

Q. Your age? A. Fifty-two.

Q. And your occupation?

A. Well, it is real estate, more or less—cabins and houses for rent.

Q. You reside here in Juneau? A. Yes, sir.

Q. Where do you reside in Juneau?

A. Down on the beach here, my house is.

Q. On lower Franklin Street? A. Yes.

Q. Just below Chief Johnson's house?

A. Yes, sir.

Q. How long have you lived there?

A. Over 20 years.

Q. Do you know George E. James?

A. Yes, sir.

Q. Do you know where the James gridiron is on the beach on the sea side of Front Street or Franklin Street? A. Yes, sir.

Q. Did you live there in that—were you in Juneau in 1900? [161—121] A. Yes, sir.

Q. Did you know George E. James at that time?

A. Yes, I believe I did.

Q. Did you ever see George E. James down in the

(Testimony of Frank Roberts.)

vicinity of the place where his gridiron now is in 1900?

A. I couldn't swear what year it was in; I have seen him there several years, off and on.

Q. Do you know how long ago it was you saw him first?

A. I couldn't state exactly what year it was in.

Q. Do you remember—for the purpose of refreshing your recollection—when the flume was built in the Last Chance Basin? A. Yes, sir.

Q. Was it any time near that?

A. Yes, just about that time.

Q. What did you see Mr. James doing in that vicinity down there?

A. He used to land lumber there, scows, rafts and one thing or another.

Q. At what point?

A. At the place where that gridiron now is.

Q. How long has he been doing that?

A. Well, off and on ever since, as near as I can tell.

Q. Do you know where the old Murray and Carroll wharf was? A. Yes, sir.

Q. Was that used as a landing place by vessels in the year 1900?

A. Well, let's see; it wasn't used as soon as this wharf was built down here, the P. C. wharf down here. It wasn't used after that was built, as near as I can recollect.

Q. At the time you first saw Mr. James using this waterfront, this piece of beach, tide land, to which

(Testimony of Frank Roberts.)

you have testified, was there any structure on it or building? [162—122]

A. Where that gridiron is?

Q. Where that gridiron is now?

A. Not to my knowledge.

Q. Have you ever seen any one else using this piece of beach except Mr. James?

A. Nobody but him and the Indians that lived there.

Q. Now, do you remember when this gridiron—well, I will withdraw that question—do you know Charley Biernoth, the witness who just left the stand?

A. No, sir, I do not. I have seen him a few times before, but didn't know his name.

Q. Did you know him in 1900?

A. No, sir, I did not.

Q. Do you remember when the first gridiron was built on this piece of ground?

A. Well, it was several years ago; I don't remember the exact date.

Q. You don't remember the exact date?

A. No.

Q. Has there been at any time—well, I will withdraw that question—Who have you seen use that gridiron?

A. Well, just Mr. James, I guess, and his scows and lumber that he brought over there—only one I know of outside of lately, some one putting in gravel there—I don't know who is doing that.

Q. Now, between 1900 and the present time, have

(Testimony of Frank Roberts.)

you ever seen any one other than—who, if any one, but George E. James, have you seen use that water front and gridiron?

Mr. BAYLESS.—Just a minute. There is no testimony to indicate that Mr. James ever used the gridiron in 1900.

Mr. GUNNISON.—I mean the waterfront—I mean that piece of waterfront.

A. Nobody that I have seen use it outside of Mr. James bringing [163—123] scows and rafts over there.

Q. Since that gridiron was constructed have you ever seen any one use it other than Mr. James?

A. Not to my knowledge.

Q. Have you ever seen the Pacific Coast Company land any vessels there? A. No, sir.

Q. Do you remember when the street was built down there as far as your place?

A. Well, it was a few years ago. I don't know just what date, no, sir. I know it was quite a few years ago.

Q. You don't remember the date?

A. No, not just exactly—probably eight or ten years ago.

Q. How long have they been using that as a public street from Goldstein's down to where you live; are you able to give the number of years?

A. It has been over twenty-six years to my knowledge.

Mr. GUNNISON.—That is all.

(Testimony of Frank Roberts.)

Cross-examination.

(By Mr. BAYLESS.)

Q. What did that public street consist of, Mr. Roberts, twenty-six years ago?

A. Nothing but open beach. We used to walk along the beach.

Q. It wasn't planked over at all?

A. No, sir, it wasn't.

Q. Was it planked ten years ago?

A. Well, when they built the street, that is the only time it was planked. I made a kind of a walk there myself about eighteen or twenty years ago. [164—124]

Q. You put that in yourself?

A. That is, I spread a few planks along the beach where there was water.

Q. The city didn't do that, did they?

A. No, I did that myself.

Q. About eighteen years ago?

A. Somewhere along there.

Q. When did the city build the street?

A. I don't remember—after Jorgenson built his mill down there, whenever that was; I don't know the exact date. If you look in the records you can find out.

Q. How long has the street been past the gridiron?

A. When the contractor built the street clear from Goldstein's to the sawmill.

Q. It wasn't from the Juneau Iron Works?

A. Well, somewhere about there.

Q. Do you know exactly where that started and

(Testimony of Frank Roberts.)

finished? A. Well, somewheres down there.

Q. You are not quite sure? A. No.

Q. You don't know what year it was?

A. No, not exactly.

Q. Did you ever see Mr. James clear the beach of boulders?

A. Well, I have seen him around there several times with boats and scows, one thing or another.

Q. How often did you see him in the summer time?

A. Well, I wasn't around always in those days; I used to work up at Chilkat.

Q. How much of the time have you been in Juneau since 1900?

A. Well, I have been here, I believe I have been in this town over twenty-four years—twenty-six.
[165—125]

Q. You have been here in Juneau?

A. Yes, in this town.

Q. You have been here twenty-four years?

A. About twenty-six, taking it all through.

Q. Where were you in 1900?

A. I don't know exactly. I might have been up at Chilkat in the summer time.

Q. That is the summer of 1900. Well, during the winter of 1900 did you see Mr. James or any of his agents?

A. I think I was hunting in the winter time in those days.

Q. In the year 1901 where were you?

A. Well, I am not sure just where I was, either

(Testimony of Frank Roberts.)

here or in the summer time at the cannery at Chilkat.

Q. You were away during most of the summers?

A. In those days I was up at Chilkat for five or six seasons, during the early days.

Q. From 1900 to 1905, or somewhere thereabouts?

A. From '88 and '89.

Q. From '88 and '89, yes. Were you up there in 1900.? A. I ain't sure; I couldn't swear to that.

Q. Well, I would like to account for your time from 1900 to 1906—summers and winters—where were you during those winters?

A. I think I was around here the biggest part of the time those days.

Q. Have you got a clear recollection?

A. No, I don't know exactly just where I was in those days, most of the time here.

Q. You recall that you saw Mr. James bringing over rafts? A. Yes.

Q. Was Mr. James with these rafts? [166—126]

A. Sometimes he was.

Q. Well, how frequently would he be with them?

A. I couldn't say, because I didn't see every raft that come in. Occasionally I would see a raft with lumber.

Q. Did they ever have occasion to move any of the fishing boats away from there so they could land?

A. Not to my knowledge.

Q. Did you ever see any fish boats or other boats beached there?

A. No, not around there I don't think; I don't remember of them.

(Testimony of Frank Roberts.)

Q. Have you ever seen boats beached in that vicinity?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial,—too indefinite “That vicinity.”

Q. (By Mr. BAYLESS.) Between the Carroll wharf buildings and the present C. W. Young wharf?

Mr. GUNNISON.—Object to that as being too indefinite.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Did you ever see any fish boats or other kind of craft laying up there?

A. There might have been some anchored there in front, but I couldn't swear just when it was.

Q. What I am getting at is this: Are you prepared to swear that Mr. James is the only person who ever used that beach where the girdiron is now?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, and immaterial. The witness has never testified to anything of the kind.

The COURT.—He may ask him the question.

A. As I said before, I have seen him use the beach and the Indians also. [167—127]

Q. Did you ever see Indian canoes tied up there?

A. Why sure.

Q. Right where that gridiron is now?

A. Well, above and below there, yes.

Q. Did you see anybody else using that beach besides Mr. James?

A. Well, there might have been a boat occasion-

(Testimony of Frank Roberts.)

ally land there, but I couldn't swear just how many there was.

Q. Well, now, how often did Mr. James come over with his scows or rafts?

A. I never kept tab on that.

Q. You don't know? A. No.

Q. He didn't make regular trips over there, did he? A. Well, not to my knowledge.

Q. Do you know who built the first gridiron there?

A. Well, I think Mr. Webster.

Q. You think Mr. Webster did? A. Yes.

Q. Do you remember when it was built?

A. No, I don't remember what year it was.

Q. Do you know who used it?

A. Well, Mr. James.

Q. Mr. James used that gridiron?

A. I believe he did, yes.

Q. You are sure of that?

A. Well, I have seen him there, bringing scows and rafts.

Q. Do you know how many gridirons there have been down there on that property?

A. Only that one that I know of. There was a piece of one that was torn out.

Q. Do you know who built the first one?

A. I thought Mr. Webster did. [168—128]

Q. And you have seen Mr. James use that, have you, and then you saw him use the one that is there now? A. Yes.

Q. And he used to come over with his scows on that same piece of beach? A. Yes, sir.

(Testimony of Frank Roberts.)

Q. Well, is there any difference between this present gridiron and the one that was there first?

A. Well, I think this one that is there now is more substantial than the one there before.

Q. In the same position?

A. Just about the same location.

Q. The one that was there first didn't have any approaches to the street? A. No.

Q. There was no street there at that time?

A. No.

Q. And the approaches to this gridiron were built after the street was in? A. Yes.

Q. Do you know whether or not any lumber was brought up from the Wrangell sawmill and landed on that gridiron?

Mr. GUNNISON.—We object to that as not proper cross-examination.

Mr. BAYLESS.—It is to show that somebody else used the beach besides Mr. James.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Do you remember the time they built the Perseverance Mill?

A. Well, I believe I remember something about it, yes. [169—129]

Q. Do you remember where those timbers came from? A. No.

Q. You don't know where those mill timbers came from?

A. No, I don't recollect. I didn't pay much attention.

(Testimony of Frank Roberts.)

Q. Do you know whether they were furnished by Mr. James or the Wrangell sawmill?

A. I couldn't swear to that.

Q. Do you know whether or not Mr. James was using this gridiron at the time these mill timbers were furnished for the Perseverance Mill?

A. I couldn't swear to that.

Q. What is your best recollection?

A. It was used, but I don't remember who was using it at that time.

Q. Mr. Roberts, do you know the scow which used to come up here from Wrangell?

A. Yes, I do.

Q. Do you remember where that scow landed?

A. Well, they used to tie it very often at the Young Dock there, that is, where the ferry float is. They used to unload lumber on the Young Dock.

Q. Did they ever land that on that gridiron?

A. Not to my knowledge.

Q. You don't know that? A. No.

Q. You don't know when they first came up here?

A. I couldn't swear to the date it has been so many years ago.

Q. Do you know whether or not it did land at that gridiron? A. I couldn't swear to that.

Mr. BAYLESS.—That is all. [170—130]

Redirect Examination.

(By Mr. GUNNISON.)

Q. You say you think Mr. Webster built the first gridiron down there; what happened to that first gridiron, do you remember?

(Testimony of Frank Roberts.)

A. Well, it got tore loose there one time, I don't know whether it was the high tide or what did it. I noticed once there was part of it tore away.

Q. And how long afterward was another gridiron put in?

A. It wasn't long. I couldn't swear just how long, but not very long.

Q. Have you any recollection how that was constructed, that first gridiron, or platform, or whatever it was? A. No, I couldn't say.

Q. You haven't enough of a recollection?

A. I didn't pay much attention to it.

Q. You say the gridiron that is now there is in about the same locality. What do you mean, with reference to the beach line or how do you mean that is generally in the same situation?

A. As near as I can tell, in the same place about.

Q. On the beach, do you mean?

A. Yes, the same place, as near as I can tell.

Q. What do you say with reference to the character of the two gridirons as to which is the more substantial?

A. I mean this one is more substantial, stronger—piles built there.

Q. Permanent?

A. Permanent, yes. The other more in a hurry. It lay loose like and was carried away, but these are drove in good and solid and made to stay. [171—131]

Q. And you don't remember exactly when that was done?

(Testimony of Frank Roberts.)

A. No, not the exact year; I never paid much attention to it.

Q. Have you any idea about how long ago it was.

A. Well, it was several years ago; I couldn't swear just when.

Q. Do you know what made that old platform go out of there? A. No, I didn't see it go out.

Q. You know it did go out?

A. I know it got tore out some way; I don't know how—never saw it go out.

Q. And you know this is a different one?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) What do you say as to whether or not this is the same or a different one?

A. This is a different one.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Mr. Roberts, are you prepared to swear positively that that old gridiron was entirely torn out and this one was redriven?

A. I couldn't swear to that, that it was entirely tore out or not; it was partly tore out.

Q. Are you prepared to swear that this is an entirely new gridiron, or the old one repaired?

A. Well, I wouldn't swear positively that it was entirely new or not.

Mr. BAYLESS.—That is all. [172—132]

Redirect Examination.

(By Mr. GUNNISON.)

Q. What do you say—did you say that old grid-

(Testimony of Frank Roberts.)

iron ever was down, broken? A. Yes.

Q. Did you see them haul it away?

A. I think the tide hauled it away, biggest part is what I said.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you have—

The COURT.—My goodness, when are you going to get through with this witness? Is there any new question on cross-examination, your original cross-examination, you want to bring out? There is nothing that has been developed in the last three recross-examinations that bears on this question at all. If you haven't anything more than what has been done, I will have to discharge this witness.

Mr. BAYLESS.—That is all.

(Witness excused.) [173—133]

[**Testimony of Sam Kohn, for Defendant.**]

SAM KOHN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. Gunnison.)

Q. State your name, Mr. Kohn?

A. Sam Kohn.

Q. And your residence? A. Juneau.

Q. What is your occupation?

A. I am doing nothing at present.

Q. Do you know George E. James, the defendant in this case? A. Yes, sir.

Q. How long have you lived in Juneau?

A. Off and on since 1881.

(Testimony of Sam Kohn.)

Q. Do you know Charles Biernoth?

A. Charles Biernoth, yes, sir.

Q. Do you know where the gridiron, the James gridiron is, on lower Franklin Street? A. Yes.

Q. Are you familiar with that ground?

A. Well, I have known the ground there ever since I have been here.

Q. Have you been familiar with it since 1896?

A. Well, I haven't been familiar with it.

Q. I mean do you know—you have seen it frequently since 1896? A. Yes, sir.

Q. Do you know the old Murray and Carroll wharf? A. I do.

Q. Have you ever seen Mr. James and Mr. Biernoth on that piece [174—134] of tide land upon which Mr. James' gridiron is?

Mr. BAYLESS.—I object to that as leading.

Mr. GUNNISON.—Answer it yes or no.

Mr. BAYLESS.—And suggestive.

The COURT.—Objection overruled.

A. I have seen them both there.

Q. When was the first time you saw them there, if you can remember?

A. I couldn't tell you the exact date I saw them clear off the beach, rolling boulders and working there.

Mr. BAYLESS.—We move to strike the balance of the answer as not responsive.

The COURT.—Motion denied.

Q. (By Mr. GUNNISON.) Are you able to place that with reference to any event that transpired here

(Testimony of Sam Kohn.)

in Juneau or vicinity?

A. I don't exactly understand.

Q. Was there any structure or building being done here about that time when you first saw them there?

A. Any structure?

Q. Yes, a flume or anything of that kind?

A. No, not that I recollect of.

Q. Do you remember when the Last Chance Flume was built? A. Yes.

Q. Was it about that time?

A. Along about that time, yes, sir.

Q. Now, what were they doing on that piece of tide lands, the tide lands in controversy, when you saw them first?

A. The first attraction I saw was clearing off the ground, rolling rocks out of the way and then building a gridiron to unload lumber or anything from scows, which they afterward did.

Q. When did they build that gridiron? [175—135]

A. I wouldn't be positive when, because I didn't pay particular attention—I wasn't interested in it—but I think it was about the time they were constructing this big flume up in the basin, the time the lumber was coming up from Sheep Creek.

Q. From Sheep Creek?

A. I think that is the first place James had his saw-mill.

Q. And that was when they were clearing the ground? A. At that time, I should judge.

Q. At that time you first saw Mr. James, or at any

(Testimony of Sam Kohn.)

time prior thereto, saw Mr. James and Mr. Biernoth on this ground in question, was there any structure or anything of the kind on that ground?

A. Not that I know of.

Q. Was the Murray and Carroll wharf being used as a place of landing by sea-going vessels at that time?

A. No, sir, that was abandoned, the outer portion was.

Q. What was the interior portion used for?

A. Well, in those days there was a sardine factory there and small vessels used to come there. A portion of the old T on the outside—the bridge that led outside—there was a vacant space between the piece that was left outside and the dock.

A. You mean that some of the bents in the approach were gone?

A. Yes, and boats used to come in between those and unload the sardines. That is about the only time I have seen that in use.

Q. Who, if any one, have you seen use that piece of waterfront between the time when you first saw Mr. Biernoth and Mr. James—I mean by “that piece of waterfront” the place where the gridiron is?

A. I have never seen any one use it [176—136]

Q. By anyone, who do you mean?

A. No one outside of James and Biernoth and I have seen scows landing there with lumber.

Q. Whose scows?

A. Belonged to Mr. James, I suppose.

Q. Do you remember when the gridiron was built?

(Testimony of Sam Kohn.)

A. I couldn't say positively.

Q. Approximately how long ago?

A. Well, I know it has been built since I have been living down there, and I bought that piece of property where I am living in 1908.

Q. You bought it in 1908?

A. Yes, that is the year, I think it was, and I think that gridiron has been there all the time I have lived down there.

Q. Do you know whether it was there before you lived there? A. I couldn't say positively.

Q. But it has been there ever since you have lived there? A. Yes.

Q. Who has used it?

A. Mr. James and I think the Gastineau Mining Company had their powder and stuff on it too.

Q. The Gastineau Mining Co.?

A. I think so.

Q. How long ago?

A. Several years ago. They fetched powder over from Treadwell and landed it there.

Q. You don't mean the Gastineau?

A. Well, that company up in the Basin, whatever it is.

Q. Now, do you remember what year the street was built down there? A. The plank road?

Q. Yes, sir.

A. I can't say positively. It was built before I moved down. [177—137] I couldn't say as to the exact year.

Q. All the way down?

(Testimony of Sam Kohn.)

A. All the way down to the sawmill.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. When did you first come here, Mr. Kohn?

A. First come up here? 1881.

Q. That is, before the old Carroll Dock was built?

A. Yes.

Q. When was the Carroll Dock built?

A. I think in '83, wasn't it? I wouldn't be sure.

Q. Do you know how the boats used to tie up to the Carroll Dock in the early days?

Mr. GUNNISON.—We object to that as not proper cross-examination.

Mr. BAYLESS.—Preliminary.

The COURT.—What is it preliminary to?

Mr. BAYLESS.—I am going to try to find out whether Mr. Kohn will support Charley Wells in his testimony as to the occupation of this particular piece of ground by means of having stern lines to the piles on the corners.

The COURT.—That is your case, isn't it? You are cross-examining this witness.

Mr. BAYLESS.—Your Honor will prevent me from inquiring into his knowledge of the property prior to 1900?

The COURT.—I sustain the objection to the question because it is not proper cross-examination.

Mr. BAYLESS.—Will your Honor indicate whether I will be able to ask any questions regarding— [178—138]

(Testimony of Sam Kohn.)

The COURT.—Ask the question and I will rule on it.

Q. (By Mr. BAYLESS.) Mr. Kohn, have you any knowledge—did you know that property prior to 1900?

Mr. GUNNISON.—We object to that on the ground that it is incompetent, irrelevant, and immaterial, and not proper cross-examination.

The COURT.—The objection is sustained on the ground that it is not proper cross-examination. He hasn't testified to anything except beginning from 1900. Any thing he has testified to, you are entitled to cross-examine him on, but you cannot prove your case by the defendant's witness, because you have closed your case.

Q. (By Mr. BAYLESS.) Do you know the situation of the beach in 1900—this particular portion of the beach? A. That portion in litigation?

Q. Yes. A. I do.

Q. What was the situation there then?

A. It was a barren piece of beach.

Q. Barren piece of beach? A. Yes.

Q. Was anyone using it?

A. Not that I know of. I never saw any one using it outside of Mr. James.

Q. Did any fish boats ever land there?

A. Fish boats could lay there on account of the rocks.

Q. Did you ever see any Indian canoes tied up there?

A. As far as that is concerned, I couldn't say posi-

(Testimony of Sam Kohn.)

tively whether there was or wasn't.

Q. Do you remember when Mr. James brought scows over there?

A. I couldn't tell you the exact date. I wasn't particularly [179—139] interested in it. I was passing by there and discovered them, of course.

Q. Do you know how much they cleared?

A. No.

Q. What work did you see Mr. James doing?

A. Rolling rocks off, clearing off the ground for some purpose, clearing for the gridiron.

Q. Was that gridiron built there right after it was cleared?

A. It was some time afterwards; I couldn't say the exact time.

Q. Was it a year afterwards?

A. It might have been.

Q. It might have been six years?

A. Oh, no, it wasn't that long.

Q. It wasn't six years?

A. I don't think it was.

Q. Was it two years?

A. I wouldn't be positive, I don't want to swear positively, it might have been six months, or three months, or perhaps a year.

Q. You would say it wasn't more than a year?

A. I wouldn't be positive what time it was.

Q. What is your best recollection?

A. I couldn't say—I paid no particular attention to it. It might have been put in just after they cleared the rocks off, as far as I know.

(Testimony of Sam Kohn.)

Q. How frequently after Mr. James cleared the beach did he bring over his scows?

A. That I paid no particular attention to.

Q. How many times did you see him?

A. Well, I couldn't say.

Q. Once? [180—140]

A. Oh, yes, more than once.

Q. Two or three times?

A. Well, I wouldn't be positive how much it may have been. I seen him unloading lumber when passing by and I would go up town and come back in a couple days and see him unloading lumber again. It might have been the same scow I saw before; might have been three or four days unloading one scow. It might have been one scow or a half dozen.

Q. Was this in the summer-time?

A. Summer-time, yes.

Q. Did you ever see Mr. James land scows there in the winter or fall? A. Yes.

Q. What part of the winter?

A. During the winter months, it might have been September or October.

Q. Did you ever see him from November to April?

A. He may have landed them there but I didn't pay no particular attention.

Q. Did you ever see him land lumber there in the winter-time? A. Not that I noticed.

Q. About how many times have you seen Mr. James land his rafts and scows?

A. As I told you before, I never kept any accurate account of it. I haven't any idea—he may have

(Testimony of Sam Kohn.)

landed a hundred, may have landed only five. I wasn't interested in the proposition—why should I take such an interest in it?

Q. You don't know?

A. No, I had no business to know.

Q. Can you swear positively, Mr. Kohn, that no one else used that beach except Mr. James? [181—141]

A. Could I swear positively? No, I couldn't swear positively.

Q. As far as you know, there might have been other occupants?

A. There might have been other boats—I don't know of anybody else ever using that particular piece of ground.

Q. Did you ever see any other boats laying there?

A. No.

Q. Ever see any canoes there? A. No.

Q. You never saw anybody else but Mr. James?

A. No, I don't think I did.

Q. But you didn't see Mr. James very often?

A. Well, I don't know how often. I have seen him frequently; how many times I never kept account of it.

Q. Do you remember the time the gridiron was built? A. Not the exact date.

Q. Do you know the appearance of the gridiron as it was first constructed?

A. Well, not exactly the gridiron. I wouldn't call it a gridiron. There was some scaled posts put there and beams across for the scow to rest on and a num-

(Testimony of Sam Kohn.)

ber of times I have seen scows capsized there when the tide would come and upset them.

Q. Do you know who these scows belonged to?

A. I supposed they belonged to the James Saw-mill.

Q. Did you ever see scows from Wrangell unload there?

A. They may have been from Wrangell and may have been from 'Frisco, for all I know.

Q. Do you remember the time the Perseverance Mill was built? A. I do.

Q. Do you know where the mill timbers were brought from? A. I do not.

Q. Do you know where those mill timbers were landed? [182—142] A. I do not.

Q. Do you remember whether or not they were landed on this gridiron? A. I couldn't say.

Q. Do you know who built this gridiron?

A. It was supposed to be built by James.

Q. I know, but do you know?

A. That was the supposition.

Q. Do you know who built it? A. I do not.

Q. Did you see it when it was being constructed?

A. No, not that I know of.

Q. You saw it after it was built? A. Yes.

Q. How many gridirons were built there?

A. How many? I couldn't tell you.

Q. Is this gridiron that is on there now in the same position the first one was in?

Mr. GUNNISON.—We object to that. The wit-

(Testimony of Sam Kohn.)

ness hasn't testified that there was any first or second gridiron.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Is this the gridiron that was on the property at that time?

A. There may have been others, but it is the only one I have seen. I think it is the same one Casey lost his horse off of.

Q. Do you know when the approaches to the gridiron were first built? A. That I couldn't say.

Q. Was there any street down there when the gridiron was first constructed? A. What year? [183—143]

Q. Past the gridiron when it was constructed?

A. Yes.

Q. There was a street there?

A. There was a street there ever since Juneau was established.

Q. A plank street?

A. No, not a plank street.

Q. When was that constructed?

A. I couldn't tell you; I think the gridiron was there first.

Q. And afterwards the street?

A. I think so.

Q. Were there any approaches?

A. There was a kind of a road that led down to it, a wagon road the same as was down there along the beach.

Q. Where did the plank road end at that time?

A. There was no plank road at that time.

(Testimony of Sam Kohn.)

Q. Where did the plank road end at the time when the gridiron was first built?

A. I don't know now, to be sure, whether the plank road was in existence at that time, at the time that was built. I kind of think the gridiron was there prior to the time the plank road was built.

Q. How did you get down to the beach from the lower part of Franklin Street—part of Franklin Street was constructed, wasn't it, at the time the gridiron was built?

A. It might have been up town here. In the early days here there was no timbers at all, no planks at all; it was open right down the beach all the way through.

Q. Mr. Kohn, you said that in 1900, or thereabouts, the Carroll-Murray Dock was used as a sardine factory?

A. I think it was about that time and afterwards a glove factory. That was about all I know of who used that place. [184—144]

Q. Frank Forrest has been using that as an iron works, hasn't he?

A. That was above. Not using that building; Frank Forrest is on this side.

Q. There is a foundry there on those tide lands, isn't there? A. Yes, foundry the other side.

Q. Do you know the old Carroll-Murray wharf site? A. I know where the wharf was, yes.

Q. Do you know how big that was?

A. I haven't the least idea; I don't know how much they claimed.

(Testimony of Sam Kohn.)

Q. Do you know much about this beach prior to 1908, the beach in controversy?

A. No, I don't know much about the beach only since I moved there.

Q. How frequently did you have occasion to go down where the gridiron is now prior to 1908?

A. I would go down there quite often; I was interested in the Sheep Creek Basin, have got mines there, and a great many times I used to walk down that way. Another thing, I had acquaintances down that way.

Q. You say the Gastineau Company used to land powder there?

A. I think it was them. I have seen powder landed there. It was landed there on account of this gridiron—there is a plank there like that (indicating)—and powder was landed and hauled away, and whether it was the Gastineau or the Treadwell I couldn't say which company.

Q. Did you ever see mill timbers landed there for the Gastineau Company? A. No.

Q. Are you certain—was powder the only thing landed there?

A. No, I have seen the Treadwell Company have loads for this iron work, transformers and things.
[185—145]

Q. For power lines?

A. Power lines I suppose they used the posts for.

Q. Mr. Kohn, were there any stakes to indicate the boundaries of the property now occupied as a gridiron? A. Stakes?

(Testimony of Sam Kohn.)

Q. Yes.

A. There might have been and there might not have been.

Q. Did you ever see any boundary stakes?

A. I never looked for any.

Q. Were there any marks to define the boundaries of the ground claimed by Mr. James?

A. Not that I know of.

Q. Do you know how much ground he actually claimed? A. I do not.

Mr. BAYLESS.—That is all.

(Witness excused.)

(Whereupon court adjourned until 2 o'clock P. M. the same day, when court reconvened pursuant to adjournment.) [186—146]

[Testimony of W. W. Casey, for Defendant.]

W. W. CASEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. State your name. A. W. W. Casey.

Q. And your occupation.

A. Transfer business.

Q. Where do you live? A. Juneau.

Q. How long have you lived here, Mr. Casey?

A. About seventeen years.

Q. What occupation were you engaged in in 1900 here?

A. Transfer business. It was in 1900, I think. I am not positive whether I bought them out in the

(Testimony of W. W. Casey.)

fall of 1900 or early in 1901. I think I did—I couldn't tell to save my soul.

Q. Well, that is close enough. Do you know George E. James? A. Yes, sir.

Q. Do you know the place on the beach known as the old Murray and Carroll wharf? A. Yes, sir.

Q. Do you know the portion of the beach lying south of that where the James gridiron is located?

A. Yes, sir.

Q. Have you ever done any hauling from that point on the beach?

Mr. BAYLESS.—Object to that as immaterial.

Mr. GUNNISON.—Preliminary.

The COURT.—Objection overruled.

A. Yes, sir. [187—147]

Q. (By Mr. GUNNISON.). How often have you been at that point on the beach since the time you took over the transfer business in Juneau?

A. Practically every day.

Q. It has been a place where you have been frequently? A. Yes.

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Now who, if you know, has used that portion of the beach from—well, I will withdraw that—did you do any hauling from there in the year 1901, if you remember?

A. From that particular place you mean?

Q. Yes, sir, down in there. A. 1901?

Q. Yes, sir, in that section, from that piece of beach.

(Testimony of W. W. Casey.)

A. I think we used to haul lumber from the mill. I don't remember when the mill was built. We hauled lumber over that beach.

Q. From what mill?

A. From the Jorgenson mill; I don't remember when that street was put in.

Q. Do you know if George E. James has ever used that piece of beach where his gridiron now stands before the gridiron was there?

A. I have hauled lumber from there on a scow.

Q. Whose scow was it? A. Mr. James.

Q. Delivered there from the James sawmill?

A. Yes.

Q. For how many years have you hauled lumber from the James scow beached at that point? [188—148]

A. Well, before the street was built; I don't remember when that was. That was probably twelve or thirteen years ago.

Q. At the time you first commenced hauling lumber from there, was the Murray and Carroll wharf used as a public wharf—I will withdraw that question—from the time you first commenced to haul lumber from that point on the beach, what do you say as to whether or not sea-going vessels, or any vessels, landed at the Murray and Carroll wharf?

A. That is, you mean the old cannery?

Q. Yes, sir.

A. I do not know. I never knew it was a wharf.

Q. You didn't know it was a wharf?

A. No, not in my time.

(Testimony of W. W. Casey.)

Q. Now, do you remember when the street, the present street was extended?

A. Not as to dates. I remember the time.

Q. Now, what do you say with reference to the extension of the street—I will withdraw that—do you remember when the present gridiron that is located on there was constructed? A. Yes, sir.

Q. How long was that before or with reference—when was that constructed with reference to the building of the street, the present plank street?

A. I think it was soon after, probably a few months; I am not just positive.

Q. Do you know who built that?

A. I see Mr. James working there and I was hauling lumber from there as soon as he got the wharf done.

Q. As soon as he got it up?

A. Yes. [189—149]

Q. And had you hauled—what do you say as to whether or not you had hauled lumber from that same place prior to that time and for how long a period, Mr. Casey,—covering what period of time?

A. Well, I hauled from there, from scows, but I wouldn't say how long—I would have to look at my books to refresh my memory as to where I got my loads.

Q. Do I understand you to say it was the James scow?

A. That is what we knew it by. I would tell the teamster to go down to the James scow.

Q. And he would go there?

(Testimony of W. W. Casey.)

A. Down about where the gridiron is.

Q. How do you designate it now?

A. Just below the old cannery.

Q. When you would tell the teamster to get lumber from the James scow, where would he go to get it?

Mr. BAYLESS.—I object to that as incompetent.

Mr. GUNNISON.—Well, designating knowledge of the public.

Mr. BAYLESS.—You can't prove your case by general reputation.

The COURT.—You can prove, in order to know what Mr. Casey is talking about you may ask him. Objection overruled.

A. He would go down to the beach where the gridiron now stands.

Q. If you were to tell him you wanted to get some lumber from James now, where would he go?

A. Down on the gridiron.

Q. This same gridiron? A. Yes.

Q. Has that ever been to your knowledge used by the Pacific Coast Co.? [190—150]

A. Why, I do not know.

Q. Have you ever seen a Pacific Coast Co. boat land there? A. I don't think I ever did.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Casey, are you interested with Mr. James in any business enterprises? A. No, sir.

Q. When did you first engage in the transfer busi-

(Testimony of W. W. Casey.)

ness in Juneau? A. I don't remember the date.

Q. Whom did you buy the transfer business from?

A. I staked a fellow to it first, George Saums; they didn't make it go and I took it over.

Q. Do you know when you started to haul lumber for Mr. James?

A. I couldn't tell you the dates. I suppose—I hauled it before the street was put in.

Q. You do not know how many years?

A. We used to go down to Forrest's right where the incline is and haul lumber. I think that was in ninety-seven, or eight or nine—I couldn't tell just from memory; I could tell from looking over my slips.

Q. You think it was ninety-seven, eight, or nine?

A. No, along pretty near—after I came and I came in '98; it was later than that, come to think about it. Two or three years—about that—it might have been 1900 and might have been 1902 for all I know.

Q. Did Mr. James have any structures on the tide lands then at this spot? [191—151]

A. Oh, he tied up to something, might have been a pile or something, I do not know.

Q. Do you remember how he did tie—he didn't have a gridiron at that time, did he?

A. Not at first, no.

Q. Do you recollect when the first gridiron was put there?

A. I couldn't tell you as to dates. I never gave it a thought.

(Testimony of W. W. Casey.)

Q. Do you know who built that first gridiron?

A. I see James and Ed Webster working on it. I was there a good deal.

Q. Did you ever see anybody else working on it?

A. Well, their men; I don't know who they were, of course.

Q. Is that the gridiron standing there now?

A. Yes, or portions of it.

Q. And Mr. James' scows used to land at the same spot where the gridiron is now?

A. Over right about there. Right out from there maybe.

Q. Did you see any stakes to indicate the boundaries of beach claims?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Boundaries of what claim?

Mr. BAYLESS.—Of the beach claimed by Mr. James.

The COURT.—Objection overruled.

A. No, I didn't pay any attention to that.

Q. (By Mr. BAYLESS.) Do you know how much of that beach Mr. James actually used?

A. No.

Q. Before the gridiron was put in did you ever notice evidences of boundaries to define his occupation?

A. Nothing only there was a piece of beach there that was cleared [192—152] off and they landed the scow within twenty, or thirty, or forty feet from that center; it might have been a little to either side,

(Testimony of W. W. Casey.)

but it was cleaned off from rocks and they landed at that particular spot.

Q. Did you ever haul any lumber for the Perseverance Company? A. For them?

Q. Yes, sir. A. Yes, sir, I did.

Q. From this gridiron? A. Yes, sir.

Q. Do you know where that lumber was obtained?

A. It came there in scows from across the river—across the bay.

Q. Did any of it come from Wrangell?

A. I do not know.

Q. Were you here when the Perseverance Mill was built? A. Yes, sir.

Q. Did you haul any mill timbers to the Perseverance? A. Yes, sir.

Q. Where did you get them?

A. Off that slip, I think.

Q. Off this same gridiron? A. Yes.

Q. And you hauled them to the Perseverance?

A. Yes, sir.

Q. How long did the hauling of these mill timbers and supplies continue?

A. Two or three years, off and on.

Q. And that lumber came from Wrangell?

A. It might; I don't know.

Q. You know the mill timbers were delivered on that gridiron and hauled by you to the Perseverance? [193—153]

A. I know some of them were; might not be that all of them were; I can't remember.

Q. Do you know, actually know, whether they

(Testimony of W. W. Casey.)

came from Mr. James or the Wrangell sawmill?

A. I don't know.

Q. Were the old Carroll-Murray wharf buildings being occupied at that time?

A. They may have been; some one may have been living in them.

Q. Was there ever a sardine factory down there?

A. Yes.

Q. Did you ever see any fish boats land in there, herring boats?

A. They tied them around there some place.

Q. Did you ever see any fish boats beached near or in the neighborhood of the present gridiron?

A. I don't know that I ever did.

Q. Did you ever see anyone occupying this beach where the gridiron is now outside of Mr. James.

A. They might. I didn't pay any attention to that.

Q. Do you know whether or not anybody else did occupy it except Mr. James?

A. I presume they did.

Q. Did you ever see anybody?

A. I don't know who they were, if they did.

Q. Did you ever see any boats there?

A. See boats around there, yes.

Q. Did you ever see any Indian canoes?

A. Yes, I suppose so.

Q. How often did Mr. James bring over scow loads of lumber before the gridiron was built?

A. I couldn't tell you. [194—154]

Q. Did he bring them over in the winter-time?

(Testimony of W. W. Casey.)

A. Oh, yes, could bring them any time.

Q. Do you remember seeing any of them in the winter-time? A. I don't know.

Q. The sawmill was closed down in the winter?

A. I suppose so.

Q. Wasn't it during the summer-time?

A. He did his lumber business in the summer, but you could always get lumber in the winter-time.

Q. And he brought them over, the scows?

A. Yes, I suppose so. I have seen him bring it here in the winter-time in scows.

Q. You never saw any—you don't know when the plank street was put down there?

A. I don't remember the date.

Q. The gridiron as first constructed did not have any approach to the street, did it?

A. Yes, sir; oh, it might not from day to day, but they built an approach very soon, right away.

Q. Was the plank street put down there before the gridiron was built?

A. If I remember right, it was.

Q. Then the gridiron was built and then the approach from the street to the gridiron was built?

A. Yes, I think it was all built about the same time.

Q. How many approaches were there first?

A. One.

Q. Was that toward the Carroll Dock?

A. Toward town.

Q. How much later was it before the other approach was built? [195—155]

(Testimony of W. W. Casey.)

A. Why, I think the other approach has been built three or four years, probably longer.

Q. How positive are you about dates, Mr. Casey?

A. It depends upon what you are talking about.

Q. I mean as to the things you have testified to?

A. As to the date of the approach, you mean?

Q. Yes.

A. I didn't testify as to what date it was built.

Q. I mean with reference to the building of the street?

A. I didn't testify what date it was built.

Q. I know you didn't testify as to that, but how long after the street was built was the gridiron constructed?

A. I don't know; I think the next spring.

Q. You are sure the street was built first?

A. I am positive, quite positive, yes.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. Casey,—this may be, your Honor, a question on direct examination, I am not sure—before the gridiron was built, was there a platform there?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Yes, that is leading.

Q. (By Mr. GUNNISON.) What do you say as to whether or not there was any structure there before the present gridiron was constructed?

Mr. BAYLESS.—Object to that as suggestive and as answering the same purpose as the prior question.

(Testimony of W. W. Casey.)

The COURT.—I don't see how else he would ask it. "What do you say as to whether or not there was anything there?" How would you ask the question?

Mr. BAYLESS.—Ask him if there was anything on the beach before the gridiron was put in.

The COURT.—That is what he has asked him.

A. I don't know.

Q. (By Mr. GUNNISON.) Now was there—I think you said in answer to one of Mr. Bayless' questions that part of the old Murray and Carroll structures was used for people to live in, did you?

A. Yes, sir.

Q. About what time was that?

A. Oh, I should suppose ten years ago.

Q. And the boats you say you saw tied up at or near the wharf, what kind of boats were they?

A. Oh, some row boat or some little gasoline boat, something of that kind.

Q. Now, you say that you hauled timbers to the Perseverance Mill; where did you get them, at this same place? A. Yes, sir.

Q. The same slip? A. Yes, sir.

Q. And how many years did you say you hauled lumber for the Perseverance?

A. Oh, two or three; I think I worked for them about three years for a monthly salary, and I think I hauled lumber all the time off and on, occasionally.

Q. Now, what do you say as to whether or not the timber which you hauled was delivered there by Mr. James' scows? A. I do not know.

Q. Do you know the James scow? [197—157]

(Testimony of W. W. Casey.)

A. I used to; I think I do yet.

Q. What is your recollection now as to whether or not those timbers or the lumber which you hauled during those years was delivered by Mr. James' scow? A. I couldn't tell now.

Q. But at that time—during the time you were hauling lumber, did you ever see Mr. James on that ground?

A. Oh, yes, we hauled lumber. His scow might be tied to a pile there—and he might pull off one scow and put on another.

Q. And while you were hauling for the Perseverance you were hauling for other places?

A. I was hauling for the Perseverance with Perseverance teams.

Q. You were acting as superintendent of their transportation?

A. I had charge of their teams for two or three years.

Q. And at the same time also hauling for other people? A. Yes, sir.

Q. And while hauling for other people did you haul lumber from this same slip? A. Yes.

Q. Where did that lumber come from, if you remember?

A. I know James would have his scows there.

Q. All the time you were hauling Mr. James' scows would be in and out when you were hauling lumber? A. Every little while.

Q. In the winter-time, is there any time in the winter—what do you say as to whether or not there

(Testimony of W. W. Casey.)

was any time in the winter when lumber cannot be received there by scows? A. Lots of times.

Q. Well, what would be the reason for that?

A. Bad wind and rough. [198—158]

Q. But so long as there is lumber in the yards it is delivered in the winter as well as summer?

Mr. BAYLESS.—Object to that as leading and argumentative.

The COURT.—Yes, I think you might change the form of that, Judge Gunnison.

Q. (By Mr. GUNNISON.) Is lumber delivered, or have you known of lumber being delivered from the James sawmill at that slip during the winter months in the years between 1901, as I understand you began hauling, and 1913?

A. Why, I couldn't say—I have had it along in November and December, early as March probably. Might have had some in January. I couldn't tell from here.

Q. Do you know the "Alice"? A. Yes, sir.

Q. Do you know whose boat it is?

A. Said to be the mill company's boat.

Q. George E. James Company? A. Yes.

Q. Have you ever seen the "Alice" in there in the winter? A. Yes, I have seen her tied up there.

Q. How many winters?

A. I wouldn't pretend to say.

Q. You have seen her there? A. Yes.

Q. In the winter months. You say you do know the James scows?

A. I know two of them, a small and a large one.

(Testimony of W. W. Casey.)

Q. Did you ever see those scows lay there in the winter? A. Yes.

Q. Have you ever seen the James pile-driver in there? A. Yes. [199—159]

Q. In the winter-time?

A. It was the pile-driver—I have known it as the Webster pile-driver.

Q. And you have seen the pile-driver there?

A. Yes.

Mr. GUNNISON.—That is all.

(Witness excused.) [200—160]

Mr. GUNNISON.—With the permission of the Court, Mr. Robertson will examine Mr. Ross.

The COURT.—Proceed.

[Testimony of Alex. M. Ross, for Defendant.]

ALEX. M. ROSS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Will you state your name and residence to the reporter? A. Alex. M. Ross.

Q. And your residence? A. Douglas Island.

Q. How long did you live in Juneau—or when did you first come to Juneau? A. 1887.

Q. And during what period of time have you resided here?

A. I have been here nearly continuously since that time.

Q. Nearly continuously; how long were you away?

A. I was away nearly two years, the first time.

(Testimony of Alex. M. Ross.)

Q. But how long has it been since your residence was in Juneau?

A. About two years, two or three years.

Q. Do you know the location of what is known as the James gridiron?

Mr. BAYLESS.—Object to that as calling for a conclusion of the witness. The gridiron is not known as the James gridiron.

The COURT.—Objection overruled.

A. I know where it is. [201—161]

Q. (By Mr. ROBERTSON.) And you are familiar with that beach ground there, are you, Mr. Ross?

Mr. BAYLESS.—Object to that as leading.

A. Yes, I know where it is.

Q. (By Mr. ROBERTSON.) Now, Mr. Ross, state to the Court whether or not at any time during your residence in Juneau, you had occasion to frequently pass by or visit this piece of beach ground to which I have just referred?

Mr. BAYLESS.—Object to the question as leading.

The COURT.—Objection overruled.

A. In 1903 I was employed by the J. P. Jorgenson Co., and I remained in their employ until 1908 or 1909.

Q. What work were you doing for the J. P. Jorgenson Co.?

A. Foreman of the sawmill in the summer time.

Q. And where was the sawmill with reference to this piece of beach land? A. Below it.

(Testimony of Alex. M. Ross.)

Q. That is below from the town?

A. Yes, towards the City Dock.

Q. In going to your work at the sawmill, did you pass by this piece of land? A. I did, yes.

Q. And how frequently?

A. About four times a day, I think, except Sundays.

Q. Now, Mr. Ross, did you ever see anyone making any use of this piece of land at that time, 1903?

A. No, it was vacant ground at that time.

Q. When do you first recall definitely having seen some one making use of this particular piece of land?

A. Oh, 1905 or 1906, I should judge.

Q. And who did you see using it at that time?

A. I saw them landing scows there.

Q. Whose scows were being landed there?

A. I judged they belonged to the George E. James Co. [202—162]

Q. Was that the James scow you saw being landed there?

A. Well, I didn't go over and inquire and there was no name on the scow, but the lumber was spruce lumber and was hauled up town and we knew who it was hauled to and I was sure of it as a man could be without following the lumber over there and over here.

Q. At that time, how frequently did you see that land used for that purpose by Mr. James and during what term of years?

A. Mostly in the summer-time, but I couldn't tell you how many times.

(Testimony of Alex. M. Ross.)

Q. Well, for how long a term of years?

A. Well, all of two years, maybe three, up to the present time. That is, from 1905 or 1906 to the present time.

Q. Up to the time you discontinued your residence in Juneau?

A. Well, I have been with the George E. James Co. since and I know they have been using the gridiron.

Q. And on this side—you were on this side to 1908 or 1909? A. Yes.

Q. Did you see anybody else using that piece of land at that time? A. I did not.

Mr. BAYLESS.—What date was that?

Mr. ROBERTSON.—During the period from 1905 to 1908 or 1909. I intend to ask him what use was made of it at that time—of the wharf.

A. (By the WITNESS.) Well, it was either a herring factory or a glove factory just at that time. There was a herring factory there first, and that was abandoned and there was a glove factory started there afterwards.

Q. (By Mr. ROBERTSON.) What year was the road built—completed to the Jorgenson sawmill? [203—163] A. In 1905 or 1906.

Q. This gridiron I referred to—was that built prior to or after the time this road was completed down to the Jorgenson sawmill, to the best of your recollection? A. Before.

Q. The gridiron was built before?

A. Before the road was finished.

Q. Did you, or did you not, see Mr. James bring-

(Testimony of Alex. M. Ross.)

ing in lumber to that gridiron prior to the building of the road down there, the plank road?

A. Well, I couldn't say that I did. I saw lumber there, but I didn't see him bring it there.

Q. You saw lumber there? A. Yes.

Q. Whose lumber was it? A. Spruce lumber.

Q. Whose scow was it?

A. Well, there was no marks on the scow, no name. We supposed it was for the Perseverance and from the James sawmill.

Q. And before the gridiron was built, did you, or did you not, ever see lumber being brought in over that piece of beach land by the James scow?

A. Before the gridiron was built?

Q. Yes, sir. A. I don't remember.

Q. Now, during that period from 1903 to 1908 or 1909, did you, or did you not, ever see any use being made of this particular piece of beach line where the James gridiron is now located, by the Pacific Coast Co.? A. No, sir. [204—164]

Q. During that period from 1903 to 1908 or 1909, Mr. Ross, did you see any sea-going craft or vessels tied up or moored or landed at that Carroll-Murray wharf? A. From 1903 to 1907?

Q. From 1903 to 1908 or 1909.

A. No, not to the outside, but right alongside, right close up to the street there was quite a number of boats—

Q. On the town side? A. Yes.

Q. What kind of boats were they?

A. Fishing boats, I should judge.

(Testimony of Alex. M. Ross.)

Q. You mean by that, gas-boats, schooners—

A. Yes, gas-boats, and I believe there was one or two had a line to the dock.

Q. Did you at that time see any boats landed on the other side, or tied on the other side of the dock?

A. Oh, no, the dock was down at that time; my recollection is the old wharf was down, only right up on the beach right close up.

Q. On this beach, on this side of the wharf?

A. Yes.

Q. But not moored to the dock itself? A. No.

Q. Did you see any of them tied up on the other side? A. I don't remember.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Do you know how much of the beach Mr. James occupied before [205—165] the gridiron was built? A. No, I do not.

Q. Do you know where Mr. James landed his scows before the gridiron was built? A. No, I do not.

Q. Was it in the same place the gridiron is now?

A. I couldn't tell you; I don't know.

Q. Did you ever see any boundaries or stakes that would indicate the extent of the ground claimed by Mr. James where that gridiron is now? A. No.

Q. Did you ever see any one else using the gridiron besides Mr. James?

A. I don't remember anybody else using it.

Q. Where were you when the Perseverance Mill was being built?

(Testimony of Alex. M. Ross.)

A. I was with the J. P. Jorgenson Co.

Q. At the sawmill? A. Yes, foreman.

Q. Did you ever see any mill timbers landed on this gridiron for the Perseverance Company?

A. I wouldn't say it was mill timbers. There was timbers for the Perseverance.

Q. Big timbers?

A. Well, I do not know how large they were, but there was scow loads of lumber.

Q. Do you know where the lumber came from?

A. I didn't follow the lumber over, but of course we knew it was from the James sawmill.

Q. Do you know whether any came from the Wrangell sawmill?

A. No, it wouldn't come upon that scow.

Q. Did you ever see any other scows than those owned by [206—166] Mr. James there.

A. Not to my recollection, I didn't.

Q. Did you ever see any mill timbers or other lumber from the Wrangell sawmill landed at that gridiron? A. No, I did not.

Q. When did you say you first observed lumber being brought over to this spot by Mr. James?

A. It was about 1904 or 1905; it was after I went down to the sawmill, and I went down in 1903.

Q. Did you see anything doing there in 1903?

A. I couldn't say that.

Q. You don't recollect that?

A. No, I don't know.

Q. Do you know what was done in that respect in 1904?

(Testimony of Alex. M. Ross.)

A. I don't remember much about it until the road was built, only I know they used to drive down before the road was built and load lumber off a scow. That was a small gridiron at that time.

Q. Was that in the same position that this one is in?

A. I wouldn't be sure about that. It was very close.

Q. Did it have any approach to the street at that time?

A. No, there was no street at that time. It was built after that.

Q. In 1905 or 1906? A. I should judge.

Q. You are not sure?

A. I think I walked that beach about two years before the road was built.

Q. Did you ever see any fishing boats or other craft tied up on the beach where this gridiron is built now?

A. Oh, there might have been boats for temporary repairs.

Q. You have seen boats in that vicinity tied up for repairs? [207—167]

A. I would not say they were on that piece of ground, but I have seen in that direction.

Q. Below the old Carroll wharf buildings and where the Young wharf is now?

A. Well, Young's wharf wasn't there at that time, up to Bodie's. Bodie's was the first one there at that time.

Q. You say the beach in front of Chief Johnson's house up to the old wharf building?

(Testimony of Alex. M. Ross.)

A. Oh, there may have been a boat there, I wouldn't be positive.

Q. Have you any clear recollection of having seen any boats there? A. No, I haven't.

Q. Did you ever see anybody using the beach outside of Mr. James at this spot?

A. It seems to me that there was somebody used it for wood—used to bring in rafts of wood occasionally.

Q. Gus Messerschmidt?

A. I don't know who it was. They would bring them in, roll them up, and pile them up on the other side.

Q. Where this gridiron was?

A. Near there, but I don't know just where it was.

Q. Do you know whether or not Mr. James brought any lumber over before the gridiron was built?

A. No, I couldn't tell you.

Q. Do you know whether or not the Pacific Coast Company occupied this particular beach for any purpose?

Mr. ROBERTSON.—Object to that as irrelevant, incompetent, and immaterial, not proper cross-examination, and too indefinite.

The COURT.—If you confine your question to the time he has testified to on direct examination, I think it would be admissible. [208—168]

Q. (By Mr. BAYLESS.) Do you know whether or not the Pacific Coast Company has ever occupied this particular piece of beach during the time you have testified to? A. Not to my knowledge.

(Testimony of Alex. M. Ross.)

Q. But there have been other people occupying it besides Mr. James for various purposes?

A. Well, just temporarily. I wouldn't be positive about that, either—just that particular ground, but I know people have brought rafts of wood from the other side, but that particular ground I couldn't say exactly.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. Mr. Ross, how frequently you say anybody would bring wood in there?

A. Only once, that I remember.

Q. And whereabouts did he pile the wood?

A. On the upper side of the road.

Q. On the tide land or upland?

A. Upland, where the tide wouldn't touch them.

Q. You don't remember who that was?

A. No, I don't. It might have been an Indian, but I think I hauled the wood; I was in the teaming business in the early days.

Q. Did I understand you to say, Mr. Ross, that there was at one time a smaller gridiron on this tract of land?

A. Well, it looks to me that it was smaller than it is at the present time.

Q. Do you know whether or not that gridiron, that small gridiron, [209—169] ever was removed or fell down or went out?

A. No, I couldn't tell you. I don't remember that.

(Testimony of Alex. M. Ross.)

Q. And would you say that that was a substantial structure as a gridiron, or would you designate it more as a platform?

Mr. BAYLESS.—Object to that as leading and suggestive.

The COURT.—Yes, I think so, Mr. Robertson.

Q. (By Mr. ROBERTSON.) What would you term that?

The COURT.—Ask him to describe it.

Q. (By Mr. ROBERTSON.) Describe what this smaller structure was, Mr. Ross, if you can.

A. Posts were set in the ground or driven with a pile-driver, I don't remember which, and timbers put across for a scow to land on.

Q. And about the size of it—the surface?

A. Well, I would say between 40 and 50 feet long and 25 or 30 feet wide.

Q. Was that structure made part of the present gridiron on the beach?

A. It is near the same place.

Q. Well, can you state, or can you not, that it is part of the present structure?

A. Yes, I should judge it was.

Q. You think it is? A. Yes.

Q. Do you know whether or not there was a structure on there that was removed?

A. I couldn't tell you that.

Q. You have no knowledge of that?

A. I have no recollection of it.

Mr. ROBERTSON.—That is all.

(Witness excused.) [210—170]

The COURT.—Do you want to put Mr. Swan on in rebuttal beforehand?

Mr. BAYLESS.—Yes, sir.

The COURT.—Will his examination be lengthy?

Mr. BAYLESS.—Not particularly lengthy. I think we can get through with him in about an hour. The boat won't get here until nine o'clock.

The COURT.—I cannot hold a night session unless consented to by both of you.

Mr. GUNNISON.—I prefer not to. I always prefer to please counsel, but I prefer not to hold a night session tonight.

The COURT.—We have not adjourned yet.

Mr. BAYLESS.—We couldn't run to 6 o'clock.

The COURT.—It is possible.

(Whereupon Court took a recess for 10 minutes.)

[211—171]

[Testimony of Louis Lund, for Defendant.]

LOUIS LUND, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Will you state your name and residence to the reporter? A. Louis Lund; Juneau, Alaska.

Q. What business are you engaged in in Juneau?
A. Transfer.

Q. How long have you been engaged in that business in Juneau? A. Since 1895.

Q. Since 1895? A. Yes.

Q. Do you know the James gridiron and that piece of beach land on which it is situated?

(Testimony of Louis Lund.)

A. Yes, I do.

Q. You are acquainted with that piece of land?

A. Yes.

Q. Mr. Lund, have you ever done any—have you ever had occasion or had any transactions with regard to that piece of land in the nature—in the carrying on of your business that you are engaged in in Juneau? A. Yes, I have.

Q. Just state what you have done there—I mean as regards the carrying on of your business and who it was done for?

A. Well, I have been hauling lumber for different parties.

Q. Hauling lumber from—did you ever haul any lumber from that gridiron? A. Yes, I did.

Q. How many years ago was it since you first hauled any lumber from that place? [212—172]

A. Well, I can't think exactly the date without the books.

Q. Do you remember whether or not you have ever hauled any lumber from that place prior to the time the street was completed down as far as the sawmill? A. Yes.

Q. How many years prior to that was it you first hauled lumber from that piece of beach land?

A. I should judge about two years.

Q. And whose lumber was that you were hauling at that time; that is, where did the lumber come from?

A. Well, some went to the Jualpa and later on I hauled some up to the Elks.

(Testimony of Louis Lund.)

Q. Who did you get the lumber from?

A. It come on a scow or a raft.

Q. From where? A. From Douglas.

Q. Whose scow or raft was it?

A. Well, I think it was Mr. James'.

Q. George E. James? A. Yes.

Q. Now, at that time—prior to the time the street was completed down there, how did you get down there to get that lumber?

A. Unloaded it on low tide.

Q. From what?

A. Gridiron—scow or raft, whatever it come on.

Q. Into your wagon? A. Yes.

Q. And then you drove back up town; is that the idea? A. Yes.

Q. During what period of years have you hauled lumber for Mr. James from that piece of tide land; that is, when was the [213—173] last time you hauled any lumber from that gridiron?

A. Well, *some this* summer.

Q. Sometime this summer? A. Yes.

Q. Since two years prior to the time the street was built have you been off and on hauling lumber from that gridiron of Mr. James? A. Yes.

Q. And before the street was built, what kind of a structure was down on that tide land?

A. It was what we call stringers on a post.

Q. When you went down there did you drive your wagon right around the scow to unload?

A. Yes.

Q. Did you ever haul any lumber from that place

(Testimony of Louis Lund.)

except for Mr. James—I mean except James' lumber?

A. I couldn't say that for anybody else's lumber or not.

Q. Whose lumber—you do remember you hauled James' lumber from that place? A. Yes.

Q. At the time, Mr. Lund, you say you commenced to go down there, about two years prior to the time the street was built to the sawmill, what use was being made of the Carroll-Murray wharf at that time, if you remember? A. What was it used for?

Q. Yes. A. I think it was a glove factory.

Q. A glove factory?

A. Yes, and that used to be once a sardine factory.

Q. Did you ever see anybody living there?

A. Yes, I did see some one. [214—174]

Q. At the time when you—during the time you have been hauling lumber from Mr. James' grid-iron, have sea-going vessels been tied up or moored to the Carroll-Murray wharf, vessels the size of the old "Idaho," or "Anchon," or "Topeka"?

A. No, I don't think there was any sea-going vessels since that time.

Q. During that time has it ever been used as a wharf?

A. No, it hasn't been used as a wharf.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Lund, when did you first start hauling lumber from this beach?

(Testimony of Louis Lund.)

A. Well, I worked for other people before. I think I started in '89.

Q. You hauled lumber from the beach in 1889?

A. Yes; used to have raft there at different times.

Q. 1889? A. Yes.

Q. Whose lumber was that?

Mr. ROBERTSON.—We object to that as immaterial and not proper cross-examination. We confined our examination to two years prior to the time the road was built.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Whose lumber was that, Mr. Lund?

A. That come from Sheep Creek at that time.

Q. Who did you do the hauling for then?

Mr. ROBERTSON.—Object to that as irrelevant, incompetent and immaterial. [215—175]

The COURT.—Objection overruled.

A. Some I hauled for myself and some I hauled for other people. I went down there and got it off the raft myself.

Q. Have you been hauling lumber from that beach since 1889 down to date? A. Yes.

Q. Well, between 1889 and 1900 did you do any hauling of lumber from that beach?

Mr. ROBERTSON.—We object to that as immaterial and not proper cross-examination, and, furthermore, it is indefinite as to what beach he means, whether he is speaking of this particular piece I referred to or not.

Mr. BAYLESS.—I mean now referring to the

(Testimony of Louis Lund.)

beach now claimed by Mr. James.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. Yes, I hauled some. We used that for a garbage dump for some time.

Q. (By Mr. BAYLESS.) Garbage dump?

A. Yes, till they stopped us.

Q. Well, in 1900—from 1900 to 1905 did you haul lumber from that beach?

Mr. ROBERTSON.—Same objection.

The COURT.—I understand when you say “that beach,” you mean the place where this gridiron is?

Mr. BAYLESS.—Is now situated, yes, sir.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

Q. (By Mr. BAYLESS.) From 1900 down to 1905, did you haul any lumber from the piece of beach land that is now claimed by Mr. James?
[216—176]

A. Well, I think I did sometimes, yes.

Q. Who did you haul for?

A. Well, I hauled quite a lot for James himself. He built a number of houses himself around town that year.

Q. That is, before the gridiron was built?

A. Yes.

Q. Did you do any hauling for Mr. James in 1900?

A. Well, I think I took some lumber up to the schoolhouse; I believe that was the biggest lot of lumber I hauled at one time.

Q. What time in 1900 was that?

(Testimony of Louis Lund.)

A. Well, I should judge about the month of June or July?

Q. How do you happen to recall that?

A. No, I couldn't unless I go back to the books.

Q. Are you sure it was 1900?

A. I don't know; it was somewhere around there.

Q. What did you do in 1901?

A. Well, I was engaged in the same business.

Q. Were you hauling lumber from this portion of the beach? A. Not always, no.

Q. Did you haul any lumber from there?

A. Oh, yes, we did haul some.

Q. Who did you haul from there for?

A. Lots of times hauled lumber to the hospital—

Q. Who hauled that lumber?

A. Well, it mostly come from the Douglas mill.

Q. Did you do any hauling from the Sheep Creek or the Jorgenson sawmills? A. Yes, I did.

Q. And it was landed at that beach? A. Yes.

Q. Was any lumber landed there from Wrangell?

[217—177]

A. No; they had a lumber-yard of their own.

Q. Where? A. Called the Union wharf.

Q. Union wharf?

A. Yes; Behrends and Rudolph owned it at that time.

Q. Do you remember when the Perseverance mill was built? A. Yes.

Q. Did you haul any of those mill timbers for the Perseverance mill? A. Yes.

Q. Where did you get those timbers?

(Testimony of Louis Lund.)

A. On the beach.

Q. What part of the beach?

A. Well, some I got down to James'.

Q. Where Mr. James' gridiron is now?

A. Yes.

Q. Was the gridiron there?

A. It was a small one.

Q. Was it in the same place that the gridiron is now?

A. I think it must have been about the same place.

Q. Is this gridiron the same one that was there when the mill timbers were shipped up here?

A. I don't know for certain. They have been repairing along, right along.

Q. Does it look like the same gridiron repaired?

A. Well, I don't know. It was very low, this first one, and they raised it up and made it higher.

Q. This gridiron is in the same place as the old one?

A. Yes, I think so; it is pretty near the same.

Q. And the Perseverance mill timbers were landed on this gridiron? [218—178]

A. Well, there was some. It was very low.

Q. Where did those mill timbers come from?

A. I do not know.

Q. Do you know whether or not they came from the Wrangell sawmill? A. I couldn't say.

Q. Was there a street there when the mill timbers were being taken up to the mill?

A. No, there was just the beach.

Q. The street hadn't been put in there then?

(Testimony of Louis Lund.)

A. No.

Q. How long after was the street put in?

A. I couldn't say. There was—must have been probably four years after that.

Q. Are you guessing?

A. Well, I am not very certain of it. I know they built that street from where the Union wharf is to Forrest's, to where his shop is now, and it took over another year to get the street to the sawmill—about three years to build that street.

Q. Do you know whether or not during the time you have mentioned the Pacific Coast Co. had supervision of these tide lands involved in this case?

Mr. ROBERTSON.—We ask that the witness answer that yes or no.

Mr. BAYLESS.—I asked him if he knew.

The COURT.—What is that cross-examination of? What was brought out on direct examination that would make that competent cross-examination?

Mr. BAYLESS.—He testified, I believe, that Mr. James was occupying this particular portion of the beach. I want to find out if the Pacific Coast Co. used it.

The COURT.—I don't remember any testimony to [219—179] the effect that Mr. James occupied it.

Mr. BAYLESS.—By his gridiron?

The COURT.—Testimony from this witness?

Mr. BAYLESS.—Yes. He testified that he hauled lumber from that gridiron; that lumber was brought over by Mr. James.

(Testimony of Louis Lund.)

The COURT.—Brought over by Mr. James?

Mr. BAYLESS.—I mean the lumber was brought over from his sawmill.

The COURT.—That wouldn't make competent a question as to whether or not the Pacific Coast Co. ever exercised supervision over it. Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not Mr. James built that gridiron?

A. Well, I see him around there a whole lot when it was built.

Q. Did you see him working on it? A. Yes.

Q. Did you see him working on the old gridiron, the one that was there first?

A. I don't know whether I did or not, but I see them—

Q. How long after the first structure was put on there was the present structure erected?

A. I don't know; I think it was.

Q. Well, was the old structure just an improvement or repaired?

A. They raised it up higher.

Q. It was the same gridiron raised up higher?

A. No, I think it must have been put in new timber.

Q. New timber?

A. New timber and longer posts.

Q. Was it in the same position as the old gridiron?

A. Yes, in the same lay-out, facing the same way.

Q. How big was that old gridiron? [220—180]

(Testimony of Louis Lund.)

A. I think it was very small.

Q. How big?

A. Well, I should think it was about 40 feet long.

Q. How wide? A. Might be 20 or 25.

Q. Now, was all the lumber Mr. James handled down there put on the gridiron, or was it landed at various places along that beach near where the gridiron is now?

A. Well, I do not know. We used to have a place to drive in between the gridiron and the scow and unload from the scow at the same time.

Q. Where did the scow sit?

A. On the front of it.

Q. On the front of the gridiron? A. Yes.

Q. Then the scow wouldn't occupy the whole gridiron?

A. Well, I guess it did on that side. There was kind of two places, one for the scow and one for the timber.

Q. And you loaded timber direct on the wagon?

A. Yes, from the scow and from the upper gridiron. I know I tied it on with a rope sometimes—it was floating on the upper one.

Q. Did you ever see any timber landed on the beach near where the gridiron was?

A. Well, I sometimes did.

Q. When?

A. Oh, at various times; sometimes it floated out. At times when the scow would be up at one corner hanging on the foundation and one end on the beach.

Q. You didn't see Mr. James building that grid-

(Testimony of Louis Lund.)

iron—the first one? [221—181]

A. No, I did not see him.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. Mr. Lund, do you mean that they used to land lumber there from the Sheep Creek sawmill at the same place where Mr. James' gridiron is now?

A. Yes, they landed anywhere they could get a smooth place to land on.

Q. I know, but with reference to all this hauling—do you mean that this was done from this same part of the beach where Mr. James' present gridiron is, or do you mean it was different portions of the beach?

A. It was smoother there than it was farther down where Young's wharf is. Young's wharf is more rocky.

Q. The beach had been cleaned off there?

A. Yes.

Q. Who was operating the Sheep Creek sawmill at the time when lumber came up from there?

A. Alex, I think they called him. He was there at one time.

Q. Was that just before the Douglas sawmill was started?

A. I think Mr. James ran it at one time after Alex.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you ever see any stakes near that grid-

(Testimony of Louis Lund.)

iron to indicate the boundaries of any claims that Mr. James might have?

Mr. ROBERTSON.—We object to that as not proper recross-examination. [222—182]

Mr. BAYLESS.—It probably isn't, if the Court please—I forgot it.

The COURT.—Objection sustained.

Mr. BAYLESS.—I would like to have the privilege of asking him that question again on cross-examination.

The COURT.—You can ask him that question if you want to make him your own witness, but it is not competent on cross-examination.

Mr. BAYLESS.—That is all.

(Witness excused.) [223—183]

Mr. GUNNISON.—Now, if it please your Honor, we are ready to take up Mr. Webster's testimony and it is twenty-five minutes to four. I anticipate that Mr. Webster's direct examination and cross-examination will take at least to five o'clock and probably later, and if they want to examine Mr. Swan, I have no objection to it, but I don't want to be interrupted in the examination of Mr. Webster.

The COURT.—Very well, do you wish to examine Mr. Swan out of his turn? Probably now would be the best time to do it.

Mr. BAYLESS.—If the Court please, there isn't a great deal for Mr. Swan to rebut at this time and I would very much prefer to put him on after Mr. Webster and I will do my best to get through with him and I think we can before five o'clock. I don't

(Testimony of Louis Lund.)

think it will take me very long to cross-examine Mr. Webster.

The COURT.—The situation is just this: If you should wait till after Mr. Webster is through to put Mr. Swan on and then Mr. Swan's testimony, direct testimony, should be so long that the cross-examination would run over say six o'clock, what are you going to do?

Mr. BAYLESS.—If the Court please, in that event I think we would be entitled to have a night session.

The COURT.—Yes, but this is a holiday and I cannot have a night session unless both counsel are willing.

Mr. BAYLESS.—Yes, sir, I want to call your attention to the fact that I think it would be an indication of good sportmanship on Judge Gunnison's part if he would have that night session.

The COURT.—Very well. You and Judge Gunnison decide among yourselves whether you want to be good sports, or bad sports, or lawyers. [224—184]

Mr. BAYLESS.—I am not ready to put Mr. Swan on now.

The COURT.—I will allow you to put Mr. Swan on the witness-stand now in order to get through with him, but if you don't want to, he will have to come on when his turn comes.

Mr. BAYLESS.—Will your Honor allow me to put Mr. Swan on after Mr. Webster's direct examination?

The COURT.—Yes.

(Testimony of Louis Lund.)

Mr. BAYLESS.—I will do that.

Mr. GUNNISON.—In the event that Mr. Swan's testimony—it is quite possible that Mr. Bayless' direct examination might not take very long, but the cross-examination might take considerable time—I haven't any objection to putting him on after Mr. Webster's direct examination if he wants to, but I do not want to be precluded from a complete and full cross-examination of Mr. Swan. I understand that your Honor wouldn't do that, but I don't want to stand silent and have counsel think that I would consent to hurry the cross-examination to oblige him, as much as I would like to do it.

The COURT.—Mr. Bayless is taking the risk himself. Of course, when a witness gets on the stand, the other side is entitled to finish with him and if the other side is not finished with Mr. Swan by the time the Court has to adjourn, why then Mr. Swan will have to stay over. If he has finished, of course that is the end of it. I am not trying the case, but I cannot see how the direct testimony of Mr. Webster on a matter of this kind and the testimony of Mr. Swan could possibly take more time than to 6 o'clock.

Mr. GUNNISON.—I don't know as it would, but there are chances of it and I don't want to be in a position where counsel can say I am trying to take advantage of it. [225—185]

[Testimony of Edward Webster, for Defendant.]

EDWARD WEBSTER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Webster, you have already been sworn in this case, I think? A. Yes, sir.

Q. Now, Mr. Webster, when was it you first started in the pile-driving business?

A. Well, I started in in 1886.

Q. Were you in that business from 1900 to the present time, or to 1913, the summer of 1913?

A. Yes, sir.

Q. You know George E. James? A. Yes, sir.

Q. And you have testified on your examination as a witness for the plaintiff that you knew the piece of ground in controversy? A. Yes, sir.

Q. That is, the place where the James gridiron now stands on the beach on the sea side, or bay side, of Franklin Street below the Murray and Carroll wharf, the site of the old Carroll-Murray wharf?

A. Yes, sir.

Q. Now, in the year 1900 was the old Murray and Carroll wharf—to what use was that put at that time, in the year 1900?

A. Well, I do not know—you mean the wharf or the warehouse?

Q. I mean the wharf and the buildings on it.

A. Why, I don't know on that date just what use it was put to.

Q. Was it used as a landing place for vessels?

(Testimony of Edward Webster.)

A. No, sir. [226—186]

Q. To what use, if any, was the piece of land in controversy put in the year 1900?

A. Not any that I know.

Q. Do you know what George E. James' occupation was in 1900?

Mr. BAYLESS.—Just a minute. I object to that as being leading, calling for a conclusion and incompetent. There is no testimony that Mr. James has ever been in occupation.

Mr. GUNNISON.—Well, I will withdraw that.

Q. What was his business at that time?

A. Sawmill man.

Q. Where was he engaged in the sawmill business, if you remember?

A. Why, he was engaged at Douglas.

Q. In 1900. You think he was in Douglas in 1900. Now, do you know whether or not George E. James delivered any lumber in Juneau that year?

A. No, I do not.

Q. When was the first time you know of Mr. James delivering lumber in Juneau?

A. Well, in fact I know he has delivered lumber, but I have no dates to fix the time or anything like that.

Q. Well, approximately; fix it with reference to the construction of any building, if you are able to do that.

A. No, I don't know his business in delivering lumber—I know he has been delivering lumber there for years.

(Testimony of Edward Webster.)

Q. How long back has he been delivering lumber at that point?

A. Well, since 1904 that I know of.

Q. Now, in 1904 you say that Mr. James delivered lumber at that place in controversy? A. Yes, sir.

Q. Now, at that time, 1904, was there any structure on that piece of ground of any kind?

A. Not to my knowledge. [227—187]

Q. What did you do with reference to that ground in the year 1904, Mr. Webster?

A. Well, I went over to drive two piles for Mr. James to tie his scows and lumber up to.

Q. Where did you drive those—do you remember where on the ground?

A. Just along—there was a big rock used to sit there and we drove them out so a team could pass between the rock and where the two piles was, to leave it free.

Q. How were they driven?

A. Driven with a pile-driver.

Q. I know; I don't mean the mechanical device but what— A. Positions?

Q. Positions, that is it.

A. Say one east and one west.

Q. Of what? A. Of each side.

Q. Each side of what?

A. Say one stood—say I drove the west one first, then I drove this one east and— (indicating)

Q. Where on the ground did you drive them?

A. I don't know just exactly the position of the ground.

(Testimony of Edward Webster.)

Q. With reference to the Chief Johnson house and the ground now covered by the Young Dock.

A. Driven right in the C. W. Young Company's line—we took that line from—what we call C. W. Young Company's property.

Q. Were they driven in a line offshore, that is, running at right angles with the beach?

A. Well, they are driven up and down.

Q. Up and down from the shore? A. Yes, sir.
[228—188]

Q. I hand you a map which is already marked Defendant's Exhibit "A," received in evidence August 20, 1913,—this is a map which was offered in the preliminary hearing—and I will ask you if you can tell me what that represents in a general way?

A. It is supposed to represent the street here and the incline and the gridiron.

Q. The gridiron in controversy? A. Yes, sir.

Q. Now, will you take a pencil and mark on that, if you are able to, the point at which you drove, or the points at which you drove these two piles? Mark them "P."

A. (Witness indicates position on map with pencil marks.)

Q. Those are the points at which the—the points marked "P" in pencil are the points at which you drove those two piles? A. Yes.

Q. Is that a fairly correct representation of the location of the present gridiron and the approaches?

A. I couldn't say that from the picture it would be.

(Testimony of Edward Webster.)

Q. I say fairly correct?

A. Yes; the drawing is about the same as the shape.

Q. And the relative position between the street and the gridiron as it appears on here is about correct? A. Yes.

Mr. GUNNISON.—We offer that in evidence, your Honor, for the purpose of illustrating the testimony of the witnesses.

Mr. BAYLESS.—I have no objection.

(Admitted in evidence and marked “Defendant’s Ex. A.”)

Q. (By Mr. GUNNISON.) Now, Mr. Webster, when you put in those two piles, was there anything else on this ground in controversy?

A. No, not that I know of.

Q. Who paid you to put in those piles?

A. Mr. James. [229—189]

Q. And they were driven in the line between the Young—the ground that is now covered by the Young Dock? A. Yes, sir.

Q. And the ground now occupied by the gridiron, the James gridiron? A. Yes.

Q. Now, was Mr. James—do you know whether or not Mr. James was using this piece of beach at that time? A. Yes.

Q. For the purpose of—for any purpose?

A. Yes, he was using it for landing his scows and lumber.

Q. What time in the year did you drive those piles?

(Testimony of Edward Webster.)

A. If I remember right, it was along in the summer some time; just the month I don't remember.

Q. Are you able to say whether or not the beach had been cleared in any way at that point?

A. No, I couldn't say positively.

Q. You are not able to say positively? A. No.

Q. Now, do you know whether or not Mr. James had used that beach prior to that time for any purpose? A. No, I do not.

Q. Of your personal knowledge you do not know?

A. No.

Q. Now, do you know how often he used it in the year 1904 for the purpose which you have stated?

A. No, I couldn't say.

Q. How was it used by Mr. James in the way of landing lumber? Just describe the method used.

A. Well, used in landing scows and landing rafts there.

Q. And they were hauled away by wagons?

A. Yes, I suppose they were. [230—190]

Q. Did you ever see any scow in there that year?

A. No, I can't say I did.

Q. Did you ever see any lumber hauled away from there?

A. Well, I could say I had, but not the time.

Q. That was a long time ago and I suppose your memory isn't very fresh on it.

A. No, it isn't.

Q. Now, do you know whether Mr. James used that in the year 1905, that ground?

A. Yes, he was landing there in 1905.

(Testimony of Edward Webster.)

Q. Now, did you build anything for Mr. James there in the year 1905? A. No, sir.

Q. Did you do any work there at all in 1905?

A. No, not for Mr. James.

Q. Did you for anyone? A. Yes, sir.

Q. What did you do?

A. Drove some piles for Mr. Scott there.

Q. Do you remember how many?

A. If I remember right it was just two.

Q. Where?

A. They had a platform there, iron platform, set up and had it capped off and then had a low one here (indicating) in front of it and I drove a couple piles to tie the scow to.

Q. Now, where with reference to the street as it now stands and the gridiron of Mr. James and the approaches to that gridiron, did this platform stand?

A. Well, it stood—just how far I couldn't tell, because the street wasn't planked then. I should say it was twenty feet down below the street—20 or 30 feet. [231—191]

Q. When you say it was 20 or 30 feet below—I will withdraw that—what was the size of that platform, as you remember it?

A. Well, now, just the size of it I don't remember. I think it must have been 30 or 40 feet long anyway.

Q. Did that parallel the beach or run at right angles to the beach, that 40 feet?

A. Paralleled the beach.

Q. How wide was it?

A. Well, just the width of that one I don't know,

(Testimony of Edward Webster.)

because I went in there on high tide and drove it and I think I drove these piles about 20 or 30 feet apart for him.

Q. Did you drive those piles next to the platform itself or next to this other arrangement?

A. They had a high platform set up there and timbers bedded down there to raise the scow on.

Q. Which side? A. That side. (Indicating.)

Q. At one end of it?

A. At the bay side. They had some timbers up here (indicating) to lower their stuff off on their platform to raise the scow on the garnet.

Q. Where did you drive the piles, on the outside of those timbers bedded down, or next to the platform itself? A. Next to the platform.

Q. So that you drove a rod over? A. Yes.

Q. And you drove one at each end?

A. Yes, I should say about 30 feet apart.

Q. And they didn't quite go to the end? A. No.

Q. Now, how wide was that platform? [232—192]

A. That I don't know, because the tide was in.

Q. Over the whole platform?

A. This platform. I think it was something like 12 or 14 feet wide.

Q. And about 30 feet long? A. Yes.

Q. Where did that stand with reference to the present gridiron—was it between the site of the present gridiron and the line of high tide, or was it in a position that was coincident with it?

A. No, I would say it was further to the west.

(Testimony of Edward Webster.)

Q. By west you mean this way, towards town?

A. Yes.

Q. How much farther?

A. That I couldn't just exactly say, because I didn't have occasion to visit it afterwards.

The COURT.—Are you basing any claim on the platform?

Mr. GUNNISON.—No.

The COURT.—Well, let us get to the gridiron.

Mr. GUNNISON.—Well, I am trying to get the relative positions; there were other structures on there and I want to get its position as to where the gridiron was afterwards placed, your Honor.

The COURT.—It seems to me that you are taking up a great deal of time on something that isn't in controversy.

Mr. GUNNISON.—It may be that I am anticipating something, but I think it will show its relevancy later when other testimony comes in with reference to the use of that and other structures built on that ground.

Q. Are you able to mark on this map the place where that platform [233—193] was built or where you drove the piles? I don't want you to do it if you are not able to do it with reasonable accuracy.

A. I can't say that I am, because the position of it I don't know. The tide was over it when I was there.

Q. You think you drove two piles in the face of that? A. Yes.

(Testimony of Edward Webster.)

Q. Who was building it? A. Mr. Scott.

Q. Now, how well did that platform stand, if you know?

A. I know it was out the next year, in 1906.

Q. How do you know that?

A. I went in to drive the gridiron for Mr. James.

Q. Do you know whether or not Mr. James used that piece of tide land for any purpose during the year 1905 and while that so-called platform was standing on the beach?

A. Yes, I know that Mr. James had a small gridiron of his own, that is, some timbers bedded in there.

Q. Where was that with reference to the platform in front of which you drove the two piles?

A. No, sir, to the other side, to the east.

Q. Was it parallel to the shore line or at right angles with it? A. Well, it was up and down.

Q. From inshore out? A. Yes.

Q. How wide was it?

A. It was about 14 feet wide.

Q. And about how long?

A. I would say 20 or 30 feet.

Q. When a scow was landed upon that—I will withdraw that question—what was it used for?

[234—194] A. To land his scows on.

Q. Did you ever see any scows landed there during the year 1905? A. I can't say that I did.

Q. Were there any stakes there when you drove those piles?

A. No, there were no piles there then.

Q. No stakes of any kind? A. No.

(Testimony of Edward Webster.)

Q. Then in 1905 you say you went on there for the purpose of driving a gridiron? A. 1906.

Q. 1906, I mean. What time in 1906?

A. Well, it was along in the fall sometime, I think.

Q. In the fall of 1906?

A. No, in the spring of 1906.

Q. Was there any structure—what, if anything, had become of the platform which you say you saw upon that ground the preceding year—I mean the platform in front of which you drove the two piles and which was being constructed by Scott?

A. In the fall of 1905 that all went out. There was nothing there only a little platform that Mr. James had up and down there.

Q. That is the platform you testified to and which Mr. James used in 1905 while the platform was there? A. Yes, sir.

Q. Was there any of that platform left in the spring of 1906 when you went in to drive the James gridiron?

A. No, sir, it had all been hauled away.

Q. Where did you drive Mr. James' gridiron with reference to the platform—I will withdraw that question—Are you able to mark on this plat, Defendant's Exhibit "A," July 18, 1914, [235—195] the approximate position of the gridiron, or the James platform that was on there in 1905?

The COURT.—Mark that with a "G," the approximate position of the gridiron in 1905.

A. It laid right along in this position here; laid right along in there. (Witness marks exhibit.)

(Testimony of Edward Webster.)

Q. (By Mr. GUNNISON.) That is, it lay just to the westward of the two piles that you had driven for Mr. James sometime in the year 1904?

A. Yes, sir.

Q. Now, what did you do in the year 1906 with reference to that piece of tide land?

A. Well, I went in there and built a gridiron on it for Mr. James.

Q. Describe what you built.

A. Well, I built a gridiron that is somewhere about 80 feet by 24—the caps are 24 feet long—and I drove the gridiron, cut it and capped it, and we built a little platform—

Q. Inshore?

A. Inshore from where the present street is now. We had it upshore.

Q. Toward the present street?

A. Above the gridiron.

Q. Between the gridiron and the street?

A. Yes, sir.

Q. How did that 80 feet run, parallel—same direction as the street? A. Parallel with the beach.

Q. And how far from those two piles which you drove in 1904 did you drive the easterly, or down-channel end of that gridiron?

A. Well, it is about eight or ten feet from it this way. That is where the gridiron starts. [236—196]

Q. The gridiron starts about eight or ten feet from those two piles? A. Yes, sir.

Q. And it extends eighty feet? A. Westerly.

(Testimony of Edward Webster.)

Q. Toward town? A. That is, toward town.

Q. You say it is 20 feet wide?

A. Twenty-four—the caps are all 24 feet.

Q. Was that decked over? A. No, only caps.

Q. How did the bents run?

A. Up and down the beach.

Q. What was the purpose of that gridiron?

A. To land scows and lumber on.

Q. How were they landed on it—how were scows landed on it?

A. Well, on high tide they were floated on there.

Q. And allowed to settle when the tide would go out? A. Yes.

Q. And its purpose was to keep the scows on an even keel? A. Yes, sir.

Q. So that they might safely discharge and handle them. Now, where was that platform built?

A. Well, they set up some piles and set up a platform so they could unload off the scows onto this platform when the tide was out. There was no way down to it then.

Q. At that time lower Franklin Street had not been built? A. No.

Q. How was that place approached by wagons?

A. From the beach side, just on the beach.

Q. Was this platform which you built on a level with the gridiron [237—197] or—

A. Higher.

Q. Why higher?

A. So you could unload it and the tide wouldn't float it off.

(Testimony of Edward Webster.)

Q. What was the general character of that platform as to its being substantial?

A. No, it was just set up, wasn't substantial.

Q. What was the size of the timbers that were used in it?

A. Well, they were ten by twelves capped.

Q. How many piles did you put in it?

A. I think there were four in each bent.

Q. And how many bents?

A. I think it was something like twenty or thirty feet long.

Q. Bents about eight feet long?

A. About ten feet.

Mr. BAYLESS.—Q. How wide?

A. About fourteen or sixteen feet or so.

Q. (By Mr. GUNNISON.) And they went nearly the length of the gridiron?

A. Not quite the length.

Q. Now, when a scow sat on that gridiron would it project—I will withdraw that—Who paid you for that construction work?

A. Mr. James; I charged it to the James Sawmill Company.

Q. Now, do you know who used that gridiron that you constructed? A. Mr. James was using it.

Q. Using it how; in what manner was he using it?

A. Unloading his scows and sometimes putting lumber on there that was rafted.

Q. That was in 1905? A. No, sir.

Q. 1906? A. Yes, sir. [238—198]

Q. At that time was that piece of beach used by

(Testimony of Edward Webster.)

any other person so far as you know?

A. Not that I know of in 1906.

Q. When was the road—Franklin Street—completed down there?

A. They started it in September, 1906, and they finished it sometime in November to the Jorgenson sawmill—worked September, October, and part of November.

Q. Did you construct part of that?

A. No, sir, I did not.

Q. But you know when it was done? A. Yes.

Q. Now, did you build anything else for Mr. James on that ground?

A. In 1907 I put in the roadway from the west side.

Q. That is the side towards town?

The COURT.—West side of what?

A. Of the gridiron.

Q. (By Mr. GUNNISON.) Will you describe that and how you built it?

A. Well, I went in with the pile-driver and drove piles and cut them on an incline—drove right straight through in back of the gridiron and that was put on caps and joints and we planked it.

Q. Decked it—planked it? A. Yes, sir.

Q. The purpose of that was what?

Mr. BAYLESS.—Object to that as incompetent.

Mr. GUNNISON.—I assume, your Honor, that anything would be competent that would show the use and purpose for which any structure was built on there, provided we eventually show it was used for that purpose.

(Testimony of Edward Webster.)

The COURT.—I think so. I think you may show what Mr. James used in connection with his gridiron. I think it is competent. The objection Mr. Bayless is insisting on is [239—199] your asking “what purpose.” You had better put the question in another form.

Q. (By Mr. GUNNISON.) What was it used for?

A. Used for an approach to and from the gridiron.

Q. For teams? A. Teams, yes, sir.

Q. And wagons—used for wagons? A. Yes, sir.

Q. Now, is that approach still there?

A. Yes, sir.

Q. And did you see Mr. James—do you know of Mr. James having used that gridiron, platform, and approach in the year 1906?

A. Yes, sir, I know that he had.

Q. And how did he use it?

A. With lumber and scows.

Q. Landing scows and discharging them?

A. Yes, sir.

Q. And was that approach used?

A. The approach wasn't built until 1907.

Q. I mean in 1907; did you say they used it?

A. Yes, sir.

Q. And in what way—in the way you have just testified? A. Yes, sir.

Q. When you built that gridiron in 1906, Mr. Webster, where did you get the material with which to build it?

(Testimony of Edward Webster.)

A. Mr. James furnished it from the mill and brought it over.

Q. Was there any part of the old platform in front of which you drove two piles in the year 1905 used in the construction of this gridiron?

A. No, sir, there wasn't a thing of it left, everything had gone. [240—200]

Q. Where did this gridiron stand with reference to where that platform stood?

A. A little further up the shore and further to the east than the platform that they put in.

Q. Now, where does it stand—where does the approach which you constructed in 1907 stand with reference to that old platform in front of which you drove the two piles?

A. It is quite a ways from that and to the west of it.

Q. Now, is there anything else on that ground at the present time—on that beach I mean—any other structure that is connected with the platform or gridiron?

A. Yes, there is an approach to the east—put in in 1912.

Q. And who put that in? A. Mr. James.

Q. Where does that reach or touch Franklin Street?

A. It touches right across from there on part of the C. W. Young Company's wharf.

Q. Part of that approach goes over the C. W. Young's Dock? A. Yes, sir.

Q. Now, Mr. Webster, from the point where that

(Testimony of Edward Webster.)

approach enters the C. W. Young Dock to the point where the westerly approach reaches Franklin Street, what is the distance between those two points, if you are able to say?

A. I couldn't just say that. I never measured it. I did measure it there one day for some caps to put on for Young's, but I don't remember what they were now. It don't go clear over—it goes I should say about fourteen feet.

Q. I am asking how much ground is occupied by the structures of Mr. James westerly from the line of C. W. Young's.

A. Well, now, I should say it was thirty feet or something on the C. W. Young Company's— [241—201]

Q. I don't make myself understood. You say the easterly approach was partially on this piece in controversy and partly on the land, the tide lands of the C. W. Young Co.? A. Yes.

Q. Now, you say there are about thirty feet on Mr. Young's ground?

A. No, there may be more than that.

Q. What I am trying to get at is, how much of the tide lands claimed by Mr. James are covered by these structures which you have erected for Mr. James on the tide flats?

A. Well, the approach starts about ten feet from Young's and starts up the incline.

Q. And there are about ten feet of approach on the easterly end? A. Yes.

Q. Then you said the gridiron was about 80 feet?

(Testimony of Edward Webster.)

A. Somewhere along in that neighborhood.

Q. How long was the westerly approach?

A. That I don't remember; I think there was four or five bents in that.

Q. And that ran at an angle—joined Franklin Street at an acute angle? A. Yes.

Q. Now, do you know whether or not Mr. James used that gridiron and platform in 1908 and the approaches?

A. Oh, I am quite positive—I have used it a good deal in the winter time for my pile-driver.

Q. From whom did you get your permission?

A. I didn't get any permission. I just used it because it was a company affair.

Q. What do you mean by a company affair?

A. Mr. James and I own the pile-driver.

Q. Then you didn't apply to the Pacific Coast Co. for permission [242—202] to use it?

A. No; I had a permit from the Pacific Coast Co. for a gridiron below there.

Q. Down below?

A. Yes, alongside the soda works.

Q. But you didn't apply to the Pacific Coast Co. for permission to use this ground? A. No.

The COURT.—Which ground was that?

A. Way this side; Mr. Swan gave me permission to build a gridiron right alongside where the soda works is there.

Q. (By Mr. GUNNISON.) You mean to the town side?

A. Right at the end of the 600 feet this way.

(Testimony of Edward Webster.)

Q. That is, next to where the old Alaska Steamship Company's Dock was? A. Yes, right there.

Q. What do you say as to whether or not the tract in controversy has been used by Mr. James from that time until the present?

A. Well, I would see he was using it quite often during that time.

Q. What do you say as to whether or not it has been used in the winter time for any purpose during those years? A. Yes, it has been used.

Q. How was it used?

A. Well, the last two winters I have laid the pile-driver on it.

Q. Well, beginning with the winters prior to that?

A. In 1910 I laid the pile-driver there.

Q. Have you ever seen Mr. James' scows laid up there in the winter?

A. Yes. He had one scow pretty near the whole winter.

Q. How about the winters of 1910-11, 1911-12, 1912-13?

A. Yes, 1911, had the pile-driver on all winter.

Q. Now, what do you say as to whether or not—or as to what the [243—203] result would be of the construction of a wharf for the purpose of landing sea-going vessels across the deep water end of this tract in controversy, with reference to the value of this property and the utility for the purposes for which it is now used?

A. As to the value I couldn't say, but it would certainly cut out deep water access.

Q. I mean would it be of any use for the purposes

(Testimony of Edward Webster.)

for which it is now used if a wharf were built across it? A. No—couldn't use the gridiron.

Q. (By the COURT.) It would depend upon how far the wharf was from the gridiron?

A. Yes, but you couldn't get in from deep water with scows.

Q. Suppose the distance from the face of the wharf to the scow is a hundred feet or two hundred feet and the water was ten feet deep, couldn't you get in?

A. Yes, but if that butted up to the 600 feet, that would be a shut-off on both sides. You couldn't get a scow through to the gridiron.

The COURT.—That is something you haven't shown by the testimony, that the other end is not in the open.

Mr. GUNNISON.—I thought we had shown that it abutted on the C. W. Young Dock.

Q. (By Mr. GUNNISON.) What lies immediately east of the tract of ground upon which this gridiron stands? A. The C. W. Young float.

Q. And wharf? A. Yes, sir.

Q. Now, how far does that extend, Mr. Webster?

A. Well, just the distance out I don't remember; it is about out to deep water though. [244—204]

Q. What is the depth of water at low tide there?

A. I think there is 21 feet.

Q. At the face of the Young Dock? A. Yes.

Q. And how close do the bents of the Young Dock stand together? A. They are ten feet.

Q. Ten-feet center? A. Yes, sir.

Q. If a wharf built as the ordinary public wharf is

(Testimony of Edward Webster.)

constructed with piles and ordinary bents, capped and decked, were constructed across the face—were constructed from the point where the old Murray and Carroll Dock, or wharf, stood through to the line of the Pacific Coast Co. Dock—I mean to the line of the Young's wharf, which you say stands to the immediate easterly boundary of this, what would be the effect as to whether or not that could be used for a landing place for scows or the laying up of boats?

The COURT.—You need not ask him any such question as that. It stands to reason—common sense. Here is a gridiron, here is a wharf, and if you build something right in front of it, you can't get a scow in there.

Mr. GUNNISON.—Very well.

Q. (By Mr. GUNNISON.) Are you able to say what the cost of that gridiron, the James gridiron and approaches is? A. The cost?

Q. Yes.

A. Oh, I think that would run into three or four hundred dollars, something like that.

Mr. GUNNISON.—There might be another question, but I think that we have finished our examination in chief.

The COURT.—We will take a short recess, then you may put Mr. Swan on, Mr. Bayless.

(Whereupon the Court took a recess for five minutes.) [245—205]

[Testimony of W. F. Swan, for Plaintiff.]

W. F. SWAN, a witness sworn in behalf of the plaintiff, being called out of order by permission of the Court, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and residence, Mr. Swan.

A. W. F. Swan, Bellevue, Washington.

Q. You were formerly the agent of the Pacific Coast Co. at Juneau? A. Yes, sir.

Q. During what years?

A. August, 1903, until January, 1911.

Q. What were your duties as such agent?

A. I was agent for the Pacific Coast Co. and Pacific Coast Steamship Co., in charge of their properties here and in charge of their transportation business.

Q. Do you know the property involved in this action? A. Yes, sir.

Q. Were you acquainted with it when you first came?

A. Yes, the property was turned over by the former agent as being property of the Pacific Coast Co.

Q. Was that property claimed by the Pacific Coast Co. at that time? A. Yes, sir.

Q. Is that part of the old Carroll-Murray wharf site? A. Yes, sir.

Q. What was its situation with reference to occupation by the company of the Carroll-Murray wharf site when you first came here?

A. Well, they used the warehouse as a storage

(Testimony of W. F. Swan.)

warehouse at that time. [246—206]

Q. Who were the occupants?

A. I think there was a man named Calder in there when I first came here.

Q. Was any part of it used as a sardine factory or glove factory?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial and suggestive.

The COURT.—Objection overruled.

A. It was not used at that time as a sardine factory. It was a storage warehouse for fishing gear and salt.

Q. (By Mr. BAYLESS.) Was that occupied by tenants of the Pacific Coast Co.?

Mr. GUNNISON.—We object to that as leading.

The COURT.—Objection overruled.

A. Yes, I think it was.

Q. (By Mr. BAYLESS.) Well, now, how much of the Carroll-Murray wharf site was actually occupied by the Pacific Coast Co. or its lessees?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial; that there is no evidence by this witness as to what the Murray and Carroll wharf site consisted of. It is objected to further on the ground that it is too indefinite and not confined to the land in controversy or to the structure known as the Murray and Carroll wharf.

The COURT.—The question is objectionable because it is not rebuttal. The other objections I don't

(Testimony of W. F. Swan.)

think will count. If you confine your question to the particular thing in controversy, then it would be proper rebuttal, but to ask him what the Carroll wharf site was used as is not rebuttal. What this piece of land in controversy was used for by the company, if it was used at all, would be in rebuttal.
[247—207]

Q. (By Mr. BAYLESS.) Mr. Swan, was this particular piece of property now claimed by Mr. James actually occupied by the company when you first came here? A. No, sir.

Mr. GUNNISON.—We object—well, he has answered it.

The COURT.—I didn't hear his answer.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, leading and suggestive; that the proper method it seems to us would be to ask him what they did or what they had on it or how they used it.

The COURT.—Yes, I think so, Mr. Bayless. Reform the question and ask him what, if anything, they did with this particular piece of property.

Q. (By Mr. BAYLESS.) What, if anything, did the Pacific Coast Company do, or what, if anything, did the Pacific Coast Company do with this property about the time you came here?

Mr. GUNNISON.—We object to that unless it is confined to the property in controversy.

The COURT.—He says this particular piece of property.

Mr. GUNNISON.—Very well.

(Testimony of W. F. Swan.)

A. They weren't doing anything with it.

Q. (By Mr. BAYLESS.) What was the situation when you first came here?

A. To the best of my knowledge the ground was vacant.

Q. Was it occupied by any particular person?

A. I didn't know that it was, no.

Q. Did you see Mr. James hauling lumber or landing scows and rafts there when you arrived?

Mr. GUNNISON.—We object to that as leading and suggestive.

The COURT.—Ask him what, if anything, he saw Mr. James do there. [248—208]

Q. (By Mr. BAYLESS.) What, if anything, did you see Mr. James do there about the time you arrived?

A. I didn't see it being used by Mr. James or any one else at that time.

Q. Did you know that Mr. James was landing rafts or scows there at that time?

Mr. GUNNISON.—Same objection—leading and suggestive.

The COURT.—Well, of course, Judge Gunnison, it is leading in one sense of the word.

Mr. GUNNISON.—This isn't examination in chief. Mr. Swan is a friendly witness and he is an intelligent man and it isn't necessary.

The COURT.—Mr. Swan is so intelligent and is so honest that he is not going to answer a question because Mr. Bayless wants it answered in a certain way and to direct his attention will not result in any

(Testimony of W. F. Swan.)
prejudice one way or the other.

Mr. GUNNISON.—I don't mean to intimate that it would. I have just as much regard for the integrity of Mr. Swan as the Court, but it seems to me that it isn't the proper way to examine him.

The COURT.—Read the question.

(Q. read by stengrapher:) Did you know that Mr. James was landing rafts or scows there at that time? A. No, I did not.

Q. (By Mr. BAYLESS.) What was the situation there in 1904, Mr. Swan?

A. If I remember correctly, it was used some in 1904 or right about that time that that part of the land was used or near there.

Q. For what purposes and by whom? [249—209]

A. Well, the scows were unloaded there and I didn't know at that time who those scows belonged to.

Q. I believe you said you had supervision on behalf of the company of all the company's property?

A. Yes.

Q. What did your supervision with reference to this piece of property consist of?

A. Well, I didn't interfere with any one at that time unless they were putting on permanent structures or something of that sort on the company's property and, in fact, I didn't pay much attention to it, the fact that they were landing or using a portion of the beach for landing purposes.

Q. Do you know the date the street was put down from the Juneau Iron Works to the sawmill?

(Testimony of W. F. Swan.)

A. I believe it was in the latter part of 1906, possibly October, either September or October they started the work there.

Q. Do you know who, if any one, was occupying that beach at that time?

Mr. GUNNISON.—You mean this piece?

Mr. BAYLESS.—This particular portion of the beach when the street was built down through there.

A. (By the WITNESS.) I don't remember that it was any more occupied at that time than any other.

Q. (By Mr. BAYLESS.) Do you know whether or not there were any casual occupants of that beach.

Mr. GUNNISON.—Object to that as leading.

The COURT.—Objection overruled.

A. As I remember, possibly a boat beached there for repairs or something like that—hailed up for repairs or something of that sort was done, but nothing permanent—no permanent occupancy by any one.

[250—210]

Q. What would you say as to any occupancy by Mr. James of the beach at that time in 1905—about the time the street was finished?

A. In 1905 the Pacific Coast Co. leased a landing place there to the receiver of the Wrangell sawmill for the purpose of landing lumber there for the Perseverance Company. That was done out of consideration by the company for the Perseverance people.

Mr. GUNNISON.—We object to the reasons for it and we ask leave to interrogate the witness in order to form an objection. May I ask him a question?

(Testimony of W. F. Swan.)

The COURT.—I think that is cross-examination. Read the question.

(Q. read by stenographer:) What would you say as to any occupancy by Mr. James of the beach at that time in 1905—about the time the street was finished?

A. In 1905 the Pacific Coast Co. leased a landing place there to the receiver of the Wrangell sawmill for the purpose of landing lumber there for the Perseverance Company. That was done out of consideration by the company for the Perseverance people.

The COURT.—That would be a motion to strike.

Mr. GUNNISON.—We move to strike the latter part of the answer as not responsive to the question.

The COURT.—Motion sustained.

Q. (By Mr. BAYLESS.) Mr. Swan, I hand you a paper and ask you to identify it.

A. That is the lease that was made with Mr. Davidson, representing the receiver of the Wrangell sawmill.

Q. Is this the original lease?

A. I should judge that it was, yes. Yes, I think it is.

Q. Do you know any of the signatures there?
[251—211] A. All of them, yes.

Mr. BAYLESS.—We offer this lease in evidence.

Mr. GUNNISON.—We object to the introduction of the lease on the ground that it is incompetent, irrelevant and immaterial, that it isn't in rebuttal of any evidence that has been offered by the defendant in the case, and that it is not a lease which in any way is binding upon Mr. James. The date of the

(Testimony of W. F. Swan.)

lease is July 1, 1905, and the length of the lease is only for six months, and it only covers a portion of the ground in controversy, and, further, that the recital "which said tide lands abutt and is entitled to the littoral rights thereto" is a recital which is not sustained by any evidence in the case; it is a self-serving declaration and is not binding on the defendant in any way. It is a contract between other parties.

The COURT.—It shows the exercise of an act of ownership over the property in dispute.

Mr. GUNNISON.—It shows it as based on the ownership of the upland. Our contention is that that has been cut off.

The COURT.—That may be true, but that goes to the weight of it.

Mr. GUNNISON.—Exception. And that was part of their case in chief and not rebuttal.

The COURT.—I don't pass on the effect of it at all.

Mr. GUNNISON.—That is the difficulty of offering this out of its order.

Mr. BAYLESS.—I think it is proper rebuttal testimony to show that at the time Mr. James was claiming to have been in possession we were actually in possession and I will show that possession was actually taken under the lease. I think one of the essential part of Mr. James' case is that he [252—212] show that his possession was exclusive.

(Admitted in evidence and marked "Plaintiff's Ex. #22.")

(Testimony of W. F. Swan.)

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Swan, what were the negotiations leading up to this lease?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial—the lease speaks for itself—and that the answer to that question would be in no way rebuttal of any evidence in the case.

The COURT.—I don't see where it is material, Mr. Bayless. Objection sustained.

Q. (By Mr. BAYLESS.) This lease was executed, Mr. Swan, while you were the agent of the company in Juneau?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes.

Q. (By Mr. BAYLESS.) What, if anything, was done with reference to taking possession of the property leased by the lessee?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence and not rebuttal.

The COURT.—What is it rebuttal of, Mr. Bayless?

Mr. BAYLESS.—It is rebuttal of Mr. Webster's testimony that Mr. James was in possession down there and had a gridiron and was occupying the beach for the purpose of loading and unloading scows and rafts.

(Testimony of W. F. Swan.)

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) What was done by the lessee with reference to taking possession of the property leased? [253—213]

A. They placed, or had placed, there a structure for handling lumber from the scows to the beach and loading teams.

Q. Just describe this structure.

A. I don't remember much about it. It was sort of a gridiron with a platform back of it. They placed scows on the gridiron and discharged lumber on to the wagons or platform. I don't remember the exact description of it at this time.

Q. What was this gridiron used for?

A. They used it in handling lumber received from Wrangell.

Q. And what was this lumber used for?

A. Construction work in the Perseverance Mine.

Q. Do you know how long this gridiron was occupied? A. I do not, no, sir.

Q. Do you know who occupied it?

A. Well, not personally.

Mr. GUNNISON.—Well, then, we object to any statement the witness may say.

Q. (By Mr. BAYLESS.) Did you ever see Mr. James occupying that gridiron?

A. I don't believe I did.

Q. Have you ever observed Mr. James occupying any structure on this particular piece of tide land?

A. I don't know as I ever saw Mr. James person-

(Testimony of W. F. Swan.)

ally on the ground in my life.

Q. Do you know whether or not any one occupied any structure on the property in dispute?

A. I know that it was occupied more or less in the handling of lumber down there off scows and rafts.

Q. Do you know who the individual or corporations were?

A. No, I do not,—outside the representatives of the Perseverance I didn't. As I said, I wasn't personally acquainted [254—214] but I knew they were working for the Perseverance.

Q. Were you aware of any claimants of the ground in dispute during the time you were in charge, adverse to the Pacific Coast Co.?

Mr. GUNNISON.—Object to that question on the ground that it is incompetent, irrelevant and immaterial, leading and suggestive.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No one ever claimed the property during my time in Juneau.

Q. (By Mr. BAYLESS.) Did Mr. James ever make a claim of ownership at the time you were here?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

A. No, sir, he never did.

Q. (By Mr. BAYLESS.) You knew Mr. James, did you? A. I did.

Q. Were you on friendly or unfriendly terms with him?

(Testimony of W. F. Swan.)

A. I always thought it was on friendly terms with him.

Q. Were you doing any business with him?

A. Yes, sir.

Q. Just state the extent of your business with him.

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial, and not rebuttal.

The COURT.—Objection sustained, unless it is merely preliminary to some particular business relation.

Mr. BAYLESS.—If the Court please, I desire to show that Mr. James and Mr. Swan were on very friendly terms.

Mr. GUNNISON.—That is admitted—that Mr. James was conducting business with the company continuously, and that [255—215] Mr. Swan never heard him make any adverse claim to this property, and that he was in a position to know whether or not Mr. James claimed this adversely to the company during the time he was agent.

The COURT.—You cannot show that simply by showing friendship. If you can show any statement that Mr. James has made to Mr. Swan or any statement that Mr. Swan heard Mr. James make with reference to the property, it would be competent, but simply to show that he has never made a claim to the property wouldn't be proper.

Q. (By Mr. BAYLESS.) Were you aware that Mr. James or the George E. James Co. was occupying the gridiron on this ground?

Mr. GUNNISON.—We object to that question as

(Testimony of W. F. Swan.)

irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—It is indefinite as to time also.

The COURT.—Well, then, when it is indefinite as to time, a question of that kind embraces all time.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) While you were agent, did you know that Mr. James was occupying a gridiron on this piece of property?

A. I don't know that I did, no, that the gridiron belonged to Mr. James or was claimed by him. I knew the gridiron was there and it was my impression that it was some continuation of the arrangement for handling lumber.

Mr. GUNNISON.—We object to what Mr. Swan's impression was and move to strike it.

The COURT.—Yes, that part may be stricken.

Q. (By Mr. BAYLESS.) Mr. Swan, if you had been aware of any adverse claim of that piece of property, what would you have done as agent of the company? [256—216]

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, that it calls for a conclusion, and is not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Swan, did the Pacific Coast Co. act as the owner of that particular piece of property during the time you were agent here?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, as calling for a

(Testimony of W. F. Swan.)

conclusion, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) What, if any, acts of ownership, Mr. Swan, did the Pacific Coast Co. exercise while you were the agent here?

A. You mean in reference—

Q. To this particular piece of property.

A. Well, as I said, they turned the property over to me as owning the property and they leased it, the property, with improvements put on it for carrying on business.

Mr. GUNNISON.—We move to strike the answer as not responsive and we object to the question on the ground that it calls for a conclusion of the witness as to what an act of ownership was.

The COURT.—Well, Judge Gunnison, you allowed the question to be asked and you allowed it to be answered long before you made any objection to the question and now when the question is answered, you come and move to strike out the answer without having objected to the question. The motion is denied and your objection is overruled.

Q. (By Mr. BAYLESS.) Mr. Swan, did you pay any taxes for the ground?

A. Yes, sir. [257—217]

Q. During what years did you pay the taxes?

Mr. GUNNISON.—We object to that. If the company paid the taxes it might be competent.

A. I paid it with their money.

Mr. GUNNISON.—We object to the same on the ground that the question as to what ground the taxes

(Testimony of W. F. Swan.)

were paid for is too indefinite.

The COURT.—The question is objectionable because it is not rebuttal.

Mr. BAYLESS.—If the Court please, Mr. James has produced testimony to show that he exercised certain acts of ownership over this property. I apprehend that he must show that he had exclusive possession and ownership. We rebut that by showing that we ourselves exercised certain acts of possession over this property, to wit, by the payment of taxes. It would indicate that we had no intention of abandoning the property, at least.

The COURT.—You should have proven that in your case in chief.

Mr. BAYLESS.—If that is the case, our rebuttal testimony is no good, for the reason that we should have put all that in in chief.

The COURT.—This question as to who paid the taxes on the property that you now ask Mr. Swan is not in rebuttal. If you think it is, tell me what it rebuts.

Mr. BAYLESS.—I have just been trying to explain that it is a circumstance that would indicate our ownership of this property at the time Mr. James was claiming to own it.

The COURT.—Objection sustained.

Mr. BAYLESS.—Your Honor will preclude me from introducing any testimony—

The COURT.—If you make an application to reopen your [258—218] case in chief and put Mr. Swan on to do that, you might do it, but this is not

(Testimony of W. F. Swan.)

rebuttal testimony and I say it doesn't rebut anything. The objection is made that it is not rebuttal.

Mr. BAYLESS.—I am certainly at sea in this respect. Upon consulting with our associate counsel in Seattle and with Mr. Shackelford—

The COURT.—I don't care if you consulted with Elihu Root or Chief Justice White—it doesn't make any difference to me at all. I am going to decide it the way it strikes me, without reference to anything Mr. Shackelford or anybody else says, and the ruling of the Court is that that is not rebuttal.

Mr. BAYLESS.—I understand. I would like the privilege of reopening my case in chief to get this before the Court. Having been under a misapprehension of the way to present this case, I have saved the best part of my case for rebuttal testimony, and I would like very much to reopen my case in chief.

The COURT.—Any objection?

Mr. GUNNISON.—Yes, sir. The case in chief has been closed and they have rested, and we have made our motion for a nonsuit and we proceeded with our case thus far. We have consented for him to show everything in rebuttal, but we think it isn't the proper way to try a lawsuit and we don't think it is proper to do so.

The COURT.—That may all be true, Judge Gunnison, but lawsuits are not contests of wit between counsel. A lawsuit is to get at the truth and to decide the matter according to law and according to the evidence, and no harm can be done to your side at all; consequently, I shall permit counsel to reopen

(Testimony of W. F. Swan.)

his case and recall Mr. Swan in chief. [259—219]

Mr. GUNNISON.—May I inquire to what extent the reopening of the case is permitted, in order that I may know how far our objections may go?

The COURT.—Well, perhaps Mr. Bayless had better complete his examination that is strictly rebuttal; then I will permit him to ask some questions in chief.

Mr. GUNNISON.—We except to the ruling of the Court.

Q. (By Mr. BAYLESS.) Mr. Swan, what was the arrangement between the receiver of the Wraggell sawmill and the Perseverance Company—

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial—

Q. With reference to this particular piece of ground?

Mr. GUNNISON.—And not the best evidence. There is no evidence that Mr. Swan is acquainted with the contracts of those two parties, and that it is in rebuttal of nothing.

Mr. BAYLESS.—Well, it is in rebuttal of the claim of Mr. James that he was using this platform—that that platform was at work.

Mr. GUNNISON.—He hasn't testified—

Mr. BAYLESS.—He hasn't, but the others have.

Mr. GUNNISON.—But there isn't any evidence that that was his. It has been described, and while he was there Mr. James had a platform on the other side of it.

The COURT.—Read the question.

(Testimony of W. F. Swan.)

(Q. read by stenographer:) Mr. Swan, what was the arrangement between the receiver of the Wrangell sawmill and the Perseverance Company with reference to this particular piece of ground?

Mr. GUNNISON.—We further object in that there isn't any evidence here that Mr. Swan knew anything about the arrangements between the receiver and the Perseverance Company [260—220] that had any connection other than the lease, which has been testified to and admitted in evidence.

The COURT.—I do not see how it is strictly rebuttal, Mr. Bayless.

Mr. BAYLESS.—Very well, sir.

The COURT.—The objection will be sustained on the ground that it is not rebuttal.

Mr. BAYLESS.—I will close my examination on rebuttal. Do you wish to cross-examine him on rebuttal first?

Mr. GUNNISON.—I do.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Swan, in 1903 you came to Juneau as Agent of the Pacific Coast Co., did you? A. Yes, sir.

Q. You testified in response to Mr. Bayless' question that the property of the Pacific Coast Co. was turned over to you. Where were you when it was turned over to you—when the act of turning it over to you was performed? A. I don't remember.

Q. By whom was it turned over to you?

A. The agent I relieved.

Q. Who was he? A. Mr. Dautrick.

(Testimony of W. F. Swan.)

Q. How was it turned over? A. By inventory.

Q. Where is the inventory that showed this particular piece of property?

A. Supposed to be in the records of the Pacific Coast Co. [261—221]

Q. Where? A. I could not tell you.

Q. You know that this particular piece of property was in those records—in that inventory?

A. I think all of the property that was passed was described.

Q. How was this particular piece described?

A. I don't remember.

Q. I think you said you didn't know when you arrived here that it was occupied by anyone.

A. That is what I said, yes.

Q. Do you know that anyone used it?

A. I knew they used it afterwards, yes.

Q. Well, when you came here did you know there was anyone using it? A. No, I did not.

Q. When was the first intimation you had that anyone was using that? A. I don't remember.

Q. Are you able to recall within a year or two of it, Mr. Swan? A. No, I don't know that I am.

Q. What was the condition of the Murray and Carroll wharf when that wharf was turned over to you, Mr. Swan? A. In what respect?

Q. In respect to its condition as a wharf?

A. Well, I wouldn't say it was in first-class condition for handling ocean-going steamers.

Q. To what use were the warehouses being put at that time—the warehouses on the wharf?

(Testimony of W. F. Swan.)

A. If I remember correctly, they were used for storage.

Q. By whom?

A. I think there were parties named Calder and Thomas—Calder anyway. [262—222]

Q. Storage of what? A. Fishing gear and salt.

Q. Was it a saltery? A. No, sir.

Q. Now, you were here until what time?

A. January, 1911.

Q. During the time you were here, was the Murray and Carroll wharf ever used as a landing place for vessels? A. Not large vessels, no, sir.

Q. Not large vessels?

A. No; some smaller craft would tie up there.

Q. Did they use it as a landing place or more as a mooring place?

A. Used it as a landing place, for landing fish.

Q. What was the decking and buildings on it used for during the period you were agent here?

A. Decking in the buildings?

Q. Yes, sir.

A. You mean floors of the building?

Q. Yes, sir, the deck of the old wharf and the buildings themselves?

A. There was a time it was used as—a portion of the old Carroll wharf was used—and new buildings put up in conjunction with the Carroll wharf property—used at one time as a sardine factory, smoke-house, and—

Q. Glove factory?

(Testimony of W. F. Swan.)

A. Later the newer portion of it was used as a glove factory.

Q. Now, a portion of it was also used as an iron works, wasn't it—wasn't the Juneau Iron Works on there at that time—when was that put in?

A. The Juneau Iron Works?

Q. The Forrest Iron Works. [263—223]

A. I don't remember. Sometime after I came here.

Q. By a portion of that ground?

A. I think a portion of the substructure was used for the building.

Q. Now, did any portion of the structure of the Murray and Carroll wharf, or any of these buildings to which you refer, extend over this piece of ground in controversy? A. No, sir.

Q. You say that the Pacific Coast Co. was not putting that to any use when you arrived here?

A. They were not, no, sir.

Q. Have they ever put that to any use themselves, this particular piece of tide-land in controversy.

A. I don't think they have.

Q. What acts of dominion have they exercised over that piece of ground with reference to using it since you have been here as agent either by themselves or by any other person?

A. Well, they exercised the right to lease it to others who did use it.

Q. How many times, Mr. Swan?

A. I think just the once.

(Testimony of W. F. Swan.)

Q. The once you testified on your direct examination?
A. Yes.

Q. Now, that lease recites that Mr. Davidson, the receiver—Charles E. Davidson, the receiver of the partnership estate of E. O. Sylvester and Thomas A. Willson—had erected a platform in front of Lots 1 and 2 in Block T of the Town of Juneau, was that erected before that lease was executed?

A. I think it was, if I remember correctly—that it was erected by verbal permission and the lease drawn up afterwards.

Q. How long before?

A. I couldn't tell you. [264—224]

Q. How long did Charles E. Davidson, as receiver of the partnership estate of Willson & Sylvester, occupy that tract—the tract in controversy?

A. I don't remember.

Q. Have you ever known?

A. I don't think I have.

Q. You testified that he went into possession of it—how do you know he went into possession of it?

A. Well, I saw what I suppose are acts of possession.

Q. What was it you saw?

A. I saw a scow there with some lumber or—

Q. Whose scow was it? A. I don't know.

Q. Might it, or might it not have been Mr. James' scow?

A. It might have been; I don't know the extent of his property up here.

Q. You say that it was part of your duties to

(Testimony of W. F. Swan.)

supervise the property of the Pacific Coast Co. In performance of that duty, what supervision, or how often did you visit the piece of ground in controversy here during the time you were agent?

A. Well, I do not know as I could say just how often I was down there on that particular ground—I should say about an average of twenty-five times a year.

Q. About twice a month? A. Yes, more or less.

Q. Now, when did you say Mr. Davidson, or this scow of lumber which you supposed was the Davidson—the Wrangell scow—when was it you saw that on that piece of ground?

A. I don't remember. It must have been a short time after the permission was given for them to go there—possibly in the summer of 1905. [265—225]

Q. Before or after the least was executed?

A. I think they had permission to go ahead and put up a structure pending the lease—sending to Seattle to be signed by the company. The structure was on there at the time the lease was executed. Shortly after that I think I saw it was in use.

Q. How many scows of lumber did you see on there during the year 1905? A. I don't remember.

Q. Would you say more than one?

A. Oh, yes, I think I did.

Q. Well, how many would you say?

A. It would be simply guesswork. I could say and tell the truth that I saw more than one, but as to how many is simply guesswork.

Q. Are you able to say at this time whether these

(Testimony of W. F. Swan.)

scows, more than one, you saw were the scows of Mr. James or scows of the Wrangell sawmill? A. No.

Q. Not able to identify either?

A. I didn't know the James scow or the Wrangell scow and I was under the impression that it was lumber for the Perseverance and was all done for the—the arrangement they had with the Wrangell people—I thought it was carried on right together, that James and the Wrangell people were working together. That is my recollection of it.

Q. On what did you base that?

A. The fact of the arrangements the Pacific Coast Company had with the Perseverance—that they wanted permission to handle lumber over the beach down there.

Q. Did you pay any particular attention to the structure that was erected on this piece of ground?
[266—226]

A. No, I didn't pay any particular attention to any of the structures erected there.

Q. Are you able to say how long that lasted of your own knowledge?

A. No, not in months—not in time—I don't think so.

Q. Do you know whether it was there in the spring of 1906? A. No, I do not.

Q. When did you first see the gridiron which is now on that ground?

A. I supposed it was the original gridiron.

Q. What led you to suppose that?

A. I didn't see any change.

(Testimony of W. F. Swan.)

Q. You didn't see any change? A. I did not.

Q. You have heard the testimony of the witness Webster—do you still think it was the same structure?

A. No, I don't think I would jeopardize his word that it was or wasn't the same structure. I don't think I did pay the attention to it that he did. He evidently built it, so he states, and I didn't pay any particular attention to it.

Q. That was an impression you had and not based on any close observation?

A. That is the impression and not any actual knowledge.

Q. It didn't go even so far as an opinion?

A. I don't know how to draw the line between impression and opinion, but that was my opinion—that it was the same structure.

Q. And on what did you base that?

A. On the fact that I didn't see them making any changes.

Q. You didn't happen to be there when any changes were being made?

A. No, I happened to be in California.

Q. When were you in California? [267—227]

A. 1906.

Q. The entire year? A. No; fall of 1906.

Q. What time did you go to California?

A. First part of October—came back in November.

Q. Were you here in the summer of 1906 and spring of 1906?

(Testimony of W. F. Swan.)

A. Yes, I was here all the time except October and November, 1906.

Q. You, as I understand, now say you did not see that place where that structure was at any time after the structure had fallen down or been taken away?

A. I don't know as I said that.

Q. Well, do you mean that?

A. I meant that I thought the gridiron was the original gridiron that was put in there.

Q. And you thought that because you couldn't see any change?

A. I never saw any particular change—some repairs going on down there. I supposed they were repairing the old gridiron.

Q. So you don't know whether they were repairs to the original gridiron or to the subsequent structure?

A. Or whether there was a new gridiron, I don't know of my own knowledge, no, sir.

Q. Now, did you see any scows there in 1906—well, I think I have asked you that— Did you see any there in 1907, scows loaded with lumber?

A. I don't remember that I did.

Q. Did you in 1908?

A. I don't remember that either. I don't remember whether I saw them or not.

Q. In 1909? A. I don't remember that either.

Q. In 1910? [268—228]

A. I don't remember that.

Q. You left here January 1, 1911?

A. Well, January 20, 1911.